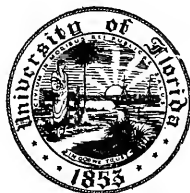




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*Our Public Life*

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# *Our Public Life*

by PAUL WEISS

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*Bloomington*

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FOR JOHN BURCH



## *Acknowledgment*

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## *Preface*

I HAVE here tried to present a systematic speculative account of the nature and need for such important groups as society, state, culture, and civilization. The very attempt will provoke skepticism in some and disinterest in others. The public we together constitute and inhabit is so complex, so unstable in form, in content, and in direction as to make every systematic study of it suspect. And there is so much of the contingent, the adventitious, the purely arbitrary in our public life that it is easy to feel that one has time and interest for little more than those words of practical wisdom which can be provided only by men who have had a long and rich experience in public life. Speculations seem to be too arid, too impractical, too alien in spirit and result to what goes on every day to make it worth one's while to engage in them. And when it is added that the present work offers accounts of Positive and Natural Law which are not in consonance with what jurists and political theorists usually provide, and that it takes seriously the

idea that there are classes in society and a place for sovereigns, there would seem to be little that one could say on its behalf. Yet what subject cannot profit sooner or later from an approach in terms of abstract and general considerations, untainted by the biases and details which happen to prevail or be dominant for a time? What subject cannot profit from an account which deals with central issues in the light of first principles having a bearing on other fields as well? Social and political theory need more, not less, speculation and systematization. What is here said may be in error. It surely could be put better. Too little is explained; too many topics are just touched upon. Yet I think the book may help one see and face questions which have too long been neglected, and to discern answers not before envisaged.

The book is small. This is one of its main virtues—and one of its most serious defects. The reader will not take long to find out what it attempts and how. But he will encounter few concrete illustrations and little reference to pertinent applications. If he will provide these himself, however, I believe that much of what is here offered as theory will be found to be of some value for the understanding of what he and others are and do, and what they would like to achieve.

In the preface to my *Nature and Man* (1946) it was said that the work would be followed by one dealing

with ethics, and that the two volumes together would "aim to establish a basis for and to introduce a projected third volume on politics." The book on ethics appeared in 1950 under the title, *Man's Freedom*.

I did not immediately go on to write the book on politics. Instead I wrote a rather extended systematic treatise entitled *Modes of Being* (1958). This attempted to show that there were four fundamental, irreducible but interconnected realities which I called Actuality, Ideality, Existence, and God.

The present book is one of a set of independent efforts—suggested and in some cases carried out in previous works—each one of which deals with one of the four modes of being, so far as this enters into experience and is qualified by man.

*Reality* (1938) and *Nature and Man* together showed how man knows and deals with the realm of Actuality through the agency of basic categories and effective action. *Man's Freedom* (1950) and *Our Public Life* analogously offer supplementary studies of the way in which the Ideal is actualized in the shape of a privately sustained ethics and a publicly significant life. These efforts should be followed by one which indicates how an experienced Existence is made to take the form of art and history, and by another which shows how an experience of God is translated into private and institutional religions. When this project is completed it should offer a counterpoint to the *Modes of Being*, in

the shape of a system of thought making evident how the four modes of being are experienced and particularized.

*Our Public Life* can serve as a surrogate for the promised volume on politics (somewhat modified in doctrine and emphasis in the light of the developments and shifts of nuance brought about by *Modes of Being*). It looks back to *Man's Freedom*, alongside to *Modes of Being*, and ahead to studies in the philosophy of art, history, and religion. It has, however, been designed to be read and understood without reference to any of these others. The chapters which constitute it were written to make a systematic whole, rather than a set of detached lectures. What was delivered as the Mahlon Powell Lectures at Indiana University last year was a selection from parts of this book. I am grateful for the opportunity given me then to present these questions and to discuss them with a distinguished group of thoughtful men and women.

PAUL WEISS

*New Haven, January 1959*

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*Our Public Life*



## *Introduction*

### 1. ON METHOD

WE MEN BELONG to many groups, large and small, young and old, important and insignificant—family, club, team, church, society, nation, state, culture. They take up much of our time; they condition and control a good part of our lives. All of them deserve examination. But I here confine myself mainly to the examination of some of the more important of the larger groups. And in the hope of clarifying and resolving issues which have long remained obscure, I try a somewhat different approach from that which is currently made to the subject. I asked myself not only how it is that men come to be part of public groups, but what ought to occur if they are to move out of inferior into better states of affairs, e.g., from conventional, traditionalized societies to states, to cultures, and then to civilization. Through the use of what is perhaps best termed a method of dialectical construction I have tried to pre-

sent a likely story of how men might ideally get together and progressively fulfill themselves. If the result has any merit it should provide a kind of ideal model which will enable us to see more clearly than otherwise just what public structures, values, and connections there might conceivably be, and just what it is that one might find valuable to institute in the field of public affairs.

The method of dialectical construction contrasts with at least four others: the genetic, the empirical, the analytical, and the paradigmatic, which have long dominated the study of social and political thought.

(a) The genetic method attempts to account for a present state of affairs by exhibiting it as the terminal point of an historic sequence of more and more developed forms. Those who adopt it are usually concerned either with an actual historic course that as a matter of contingent fact was gone through or with a type of development which must be gone through as a consequence of the irresistible pressure of some human or cosmic demand. (The two concerns are sometimes combined—as Hegel makes evident in his philosophy of history.) The first fails to tell us what could be. The second fails to tell us what is. Neither tells us what ought to be. Neither provides us with a relevant guide to the understanding of what an ideal society, state, culture, or civilization might be like.

(b) Those who pursue the empirical method try to collect all possible relevant information in the hope

that some common feature or some necessary diversity may eventually emerge from the whole. They need not, and sometimes do not, suppose that a society, state, culture, or civilization was ever preceded by some other type of association. They need not, and sometimes do not, hold that there has been a gradual progress or regress from some initial condition. And sometimes they do nothing more than record the various kinds of groups that have as a matter of fact appeared in the course of time. The empirical method, however, in the end must presuppose what it would like to discover. To know what is a genuine feature, to know what is truly common and not merely accidentally common to the items it examines, it must know what society, state, culture, and civilization in essence are. Without such knowledge it is bound to describe ineffectively, bring in much that is obscuring, lead one to generalize incorrectly, and finally to take as essential what is in fact merely adventitious.

(c) The analytic method tries to escape from the difficulties of the genetic and empirical methods by not making reference to what takes place in the course of time. In the hope of producing a precise and adequate concept, purged of irrelevancies, it breaks up the idea of the society, state, culture, or civilization into its presumed elements, and then attempts to unite them so as to make more rational or intelligible wholes. But there are many ways of analyzing a given item, many points at which an analysis might reasonably stop, many

ways in which analytic elements could be combined. To know what to begin with, to know how to break this up at its proper joints, to know where to stop the process, to know how to put the resultant elements together, requires a knowledge of what was and what was not relevant. This the method presupposes and cannot supply.

(d) The paradigmatic method produces a nonpolitical structure, nature, or activity and offers this as a model for what the society, state, culture, or civilization is, does, and ought to do. An interest in this method led Plato to look to man himself, Locke to man as in nature, Hobbes to man as facing strangers, Rousseau to man in relation to others in nature, and Marx to man in relation to tools. All of them took nonassociated man as a model in terms of which his life in a society, state, culture, or civilization was to be understood. But there is no reason to suppose that these associations follow the pattern of what is unlike them in nature, structure, purpose, or function. What is needed is a knowledge of the essence of these groupings. It is this which the dialectical method seeks to provide.

(e) The dialectical method attempts to determine what must be the case if a thought or fact is to be completed. From its use it is possible to learn what must take place if men are to make progress in the kind of public groups they constitute. Beginning with something empirically observed or known to be true, it tries to show what else must be acknowledged and added

to the initial material so as to make it part of an excellent whole.

In a way, the method combines all the others, but not without radically changing their intent. Like the paradigmatic method it is engaged in providing a model. But the model it offers is one that it itself constructs by asking what must be added if some acknowledged fact is to be completed. Like the analytic method it provides an analysis of actual societies, states, and cultures. But unlike the analytic method it both makes use of a model as a guide and identifies the elements of that model with what have been found to be the elements of the society, state, or culture. With the empirical method it attends to various groups in the past or present, but only after it has some idea of the model and thus can recognize what is essential and what is irrelevant. Finally, instead of starting, as the genetic method does, with something that might contingently or necessarily have served as the antecedent of an actual group, it attempts to see how some initial situation can be used to ground that model society, state, or culture which every actual case must illustrate.

A dialectic account of the achievement of civilization supposes nothing more than that men move from society, state, and culture and then to civilization for the sake of stabilizing, equalizing, and universalizing the results of socially habituated ways of acting in relation to one another. It offers a technique for anticipating and punctuating the outcome of man's persistent drive

to achieve a satisfying and enriching public existence. What it achieves formally is not only what might conceivably be achieved in fact, but what would answer to what man in fact persistently seeks and really needs.

## 2. MAN'S NEED

A purely "natural" man, one who has a nature which is in no way affected by the presence or action of other men, is now well recognized to be a fiction. Hobbes' unsocialized brute, with his hand raised up against his neighbor, or living in terror of what others might do, is already "unnatural." Not only is he aware of, responsive to, and conditioned by his fellow-man, but he is so alert to the nature and needs of others that he is able to forge a reasonable and permanent compact with them. His counterpart, the "happy savage" of pastoral poetry and political philosophy, is social enough to be able to carry on some needed social work. He too is brought up with others; he too in fact lives and acts with and in terms of fellow-man.

No man reaches maturity except through the help of other men. They nourish, support, protect, train, and educate him; inevitably they control, influence, and direct him. Throughout the early and formative stages of his life he is part of a wider whole. Forever after he is an "unnatural" man, one who cannot be properly understood without taking account of others, and the

whole which he and they together constitute. Every man forever bears the marks of having been brought up, even when he deliberately tries to live apart from the rest.

To be sure, no man can be wholly accounted for from without. No one comes into the world totally unorganized, completely amorphous. The new-born infant already has a structure, and even embryonic habits, drives, and appetites. External pressures rechannel and reorder these, but never completely annihilate, define, or control them.

No man ever fully conforms to the rhythms that prevail about him. The world outside a man is independent of him; he does not altogether understand it or know exactly how to adapt himself to it. And even if he did know what the world was and how to conform to it, he would be confronted with the unending task of matching his not altogether stable nature, interests, and habits with its independently determined, somewhat variable structure, contents, and laws.

A man not only cannot succeed in his effort to fit into prevailing patterns; he does not entirely want to fit into them. Part of his life is spent not in conforming to, but in holding himself apart from all else. Again and again he acts spontaneously and creatively; occasionally he is critical and rebellious, marking himself out as one who never allows himself to conform as completely as he might. He can never be adequately understood if treated as a mere function of others, or of the group

to which he and they belong. In the end, even to understand him as a member of the groups to which he does in fact belong, account must be taken of him as a private individual.

Perhaps no one characterization of man as a private individual is more fundamental than that which speaks of him as the being who prospers because he is afraid. We tend to overlook the omnipresent fact of fear when we are somewhat snugly fitted inside routine stable ways of existing, or when, under the impression that courage and other virtues involve the absence of fear (rather than its conquest), we try to deny ostensible features of ourselves and the efforts they entrain. Fear is conspicuously manifest in crises and when we are taken unawares, but it is present and can be dimly discerned in other situations as well. A crisis after all is but an ordinary occurrence made focal and pivotal, with consequences of considerable import; it differs from other occurrences in degree and not in kind.

Fear is primitive and multiform. From the very beginning of our lives we are afraid of falling and being hurt; toward the end we are afraid of disease, injury, and death. Throughout our days we are afraid of something ominous just outside the range of our perception and knowledge. Our tragedies, mythologies, and religions offer various articulations and structuralizations of this perpetual deep-rooted sensitivity to a fearsome world. The terror and dread these enterprises underscore are at one end of a spectrum of fear, at the other

end of which is a lack of ease, a vague sense of insecurity and timid surmise. No matter where a man may stand in that spectrum he is sooner or later prodded by his fear to engage in actions which, if persistent and effective, make him a member of a society, state, and culture. There are, of course, other provocations than fear to make a man act, and some of these—say, hunger, the feeling of insecurity, sexual and religious appetites—might eventuate in a desire to be part of a stable and effective social group. But fear is unusually variable in expression and comprehensive in range; it can condition other drives—whereas they cannot always condition it. And it allows us to explain the first stages of conscious life as no others apparently can.

The infant early becomes aware of sudden pressures, pains, and manipulations which interrupt or qualify its pleasant calm. It is provoked to become alert to its environment as a source of sudden threats, injuries, and controls, and thereby learns that it is weak, challenged by, endangered by, and dependent on what environs it. Since it can have no rest or satisfaction so long as it is wholly subject to outside forces, it continues to respond to what besets it until, unbeknown even to itself, it succeeds in modifying or reducing their effectiveness. Those of its activities which are promptly followed by a decrease in its tensions, the elimination of its pains, the escaping from restraints, and the release of new sources of pleasure are repeated. Slowly but surely the infant is turned into a being with more justified expecta-

tions and steadier modes of response. Its next great task is to engage in such responses deliberately, to try to propitiate and control what lies outside it. Having begun to cry because it is in pain, it soon learns to cry deliberately and anticipatorily. And, if fortunate, its cry becomes an agent in an effective possession, manipulation and mastery of which will bring the infant release, satisfaction, and peace.

He who is aware that he is jeopardized, whether by hostile forces or by placatable powers, is aware that he is incompetent, limited, deficient in some sense. Unless that awareness entrains an uncontrollable terror, it is accompanied by a response to the encompassing, insistent world about. The normal and proper form of that response is in the shape of an effort at controlling what subjugates. If the effort is successful a man can, as it were, rest in himself. He will then have within his power and being the very powers and beings which dealt with him in alien terms and threatened to alter or destroy him.

Giving in is a preliminary to a reaching out. From the very start we all make attempts to turn the world that presses in on us into the terminus of our efforts to master and control. Awareness of threat thus not only entrains fear and the awareness of defect; it also provokes an effort at mastery and a consequent awareness of our own powers, as well as of our promise to be more adequate, more complete, more in charge of ourselves than we had been before.

### 3. THE NEED FOR PUBLIC EXISTENCE

He who acts as an independent individual can be effective with respect to only a few items. No one is adroit enough to be able alone to deal adequately with every item which threatens pain or promises satisfaction. And those which can be managed are often quickly used up. Also, an adequate response often requires preparation. In order to act properly one is soon driven to specialize either in the kind of objects to which he will attend or the kind of work in which he will engage. But then he will deal with only a portion of what in fact vitally threatens, and of course with but a tiny fraction of what in fact would complete him. Because he has a narrow range of power and interest, and because he has an inevitable need to specialize, a man would be signally unsuccessful in his responses did he not act together with and take account of the needs, presence, and achievements of others. Sooner or later, for his own sake, he is forced to deal with the objects which others control, and in the terms which those others provide. Only so far as he can do this, can he become a member of a social group with them.

Men must, to be perfected, become social beings. They must act to make the structure of the group an integral part of themselves and a desirable link with others. An effective use of the energy in men requires

a canalization sustained by others; a taking account of the standards and the demands of others requires co-operation; a submission to the cut of the world requires concordant activities by many in ritual and ceremonial, in work and in play; an adjustment to others depends in part on the response they make.

Men act together in a social group largely as a matter of habit. Initially developed in the course of an attempt to overcome what threatens and disturbs, their habits become socially effective so far as they take account of what men need in order to prosper together. Common habits of dealing with objects provide the binding tissue of societies. Were these habits sufficient, there would be no need for men ever to move beyond the stage where they are integrated members of a well-coordinated, harmonious society. But habits, no matter how long and well-intrenched, are too much the products of a dead past; they favor this or that part of a being or group, not necessarily to the benefit of the individual or the group. They are not wholly determinate and may vary in strength and performance in ways which are not appropriate to actual situations. And most important perhaps is that usually they are not known. He who would belong to a society must be conventionally trained and disciplined through the daily operation of social forces, of whose nature few are aware and whose operation is rarely noticed.

The attempt to overcome such limitations and thus to complete themselves in ways not possible in a simple

society makes men receptive to government by positive law, and thus ready to submit to a state. Positive laws, because general, articulate, impersonal, and backed by authoritative power, provide men with more effective and improvable instruments for the achievement of human perfection than the best of habits can.

It is the task of a state through the agency of its laws to bring about justice, peace, and prosperity. So far as men are aware of this end, they are keyed to an ideal which is prescriptive for their states, and are so far not altogether contained inside their states. He who has attained to this position has reached the point where he can see the need for men to become parts of cultures and of a civilization.

It is conceivable of course that men might become parts of such transpolitical wholes through the agency of self-discipline and knowledge, or through the help of a God or good fortune rather than through a transformation of societies and states. But success in these directions seems to be at most partial and surely infrequent. It cannot be counted on. Men live public lives, participate in states, cultures, and civilization because they need more inclusive, stable, and richer ways of acting or being together than any society can provide. To see this most clearly it is desirable to attend first to some of the more essential features of any society, ideal or actual.

## *1. Society and Its Classes*

### 1. GROUPS

WHETHER MEN ARE independent of one another or involved with one another, whether alone in spirit, act, and place, or affecting one another, they all are units in a world population, parts of a populace, members of mankind. The most inescapable truth about men at any time is that they are men together in this way. And inside this inclusive way of being together, there are multiple subdivisions, with more limited locations, with more sharply defined traits and with quite definite careers, purposes, and histories.

Whatever the group be in which men are together, it has a structure, a form, an intelligible configuration. And it has features which no one of its members may have. Some groups are hundreds of years old, have assets and liabilities running into the billions, are parties to treaties and wars, and so on. "A large group," "an

unmanageable horde," a "frightened mob" are designations pertinent to groups but not to their members.

It is the contention of monists that nothing less than a single all-inclusive absolute being is real. Everything other than the whole is thought to be an abstraction, an illusion. The position is difficult to maintain in light of the fact that it must both affirm and deny that parts of it do have some kind of status and being. Otherwise those parts could not be contrasted with the whole, and thus could not be known, denied, or absorbed. Also, the monist, who knows these parts and recognizes the need for them to be denied or absorbed, is finite, less than the whole, and is therefore, according to his own thesis, unreal and presumably mistaken in what he says and argues for. These are grave defects. Nevertheless there is something in the doctrine. That is why it makes a continuous appeal. It keeps to the fore the fact that man by himself is somewhat incomplete. This truth Rousseau caught in his observation that a natural man would be neither good nor bad, just nor unjust, but would instead be a mere potentiality for acquiring such traits.

Without going to the extreme of supposing that every trait ascribable to man is a reflection of his group, one can with warrant urge that some of a man's dignity is at least in part a function of his place within that group. He does acquire status, promise, and powers by fitting more and more completely inside the group. It is there that he acquires determinations,

gains additional realization. It is not, however, to be overlooked that the encompassing designations are produced by him and other men; it is they alone who are capable of acting. No group is a substance; none has the capacity to will or has energy of its own, enabling it to perform some act. Whatever adventures it undergoes are a consequence of what is done on its behalf by its members.

It is the view of Plato and Aristotle, as well as of most evolutionists, that men became social beings only gradually, that they started as members of smaller and much less developed groups, such as the family or tribe, and only later attained the stage where they were parts of a society. But in fact no one of us knows at what point a group can no longer be properly termed a family, a village, or a tribe, and should instead be called a society. Nevertheless it is possible to signalize some of the essential features of a mature developed society, and provide an account of its basic subdivisions, their roles and relationships.

A mature developed society is an habituated interlocked group of men who act harmoniously together in such a way that they are mutually benefited. Such a society embraces at least four distinct classes, each with its characteristic nature and function. Men become members of them (usually without reflection) through the practice of characteristic activities answering to the primary demands of their bodies, minds, wills, and emotions. Each of the classes offers a kind of public

translation of some basic function of man. When these classes function with some regard for one another so as to constitute a stable single whole, we have a society containing the classes as parts, and the men in these classes as members.

The classes in a society lack the fixity of more developed forms of grouping. They are necessarily less comprehensive in range and embrace a smaller part of the populace than a society does. They may have overlapping membership, and in extant societies any one or the other might have little more than a minor role to play in fact. But at its best a society allows for the full play of all the classes. One of these, a kind of public will, is conspicuous for the power it exerts; a second, the locus of a social mind, for the reasonableness it exhibits; a third, emotion socialized, for the prestige it enjoys; and a fourth, representative of man's body, for its productiveness. The full being of each requires the possibility of the others; each needs the others as check and support. If we start with one we are sooner or later driven to take account of the rest.

## 2. THE EMPOWERED CLASS

Partly because they are in agreement on objectives and techniques, in their use of instruments and their sense of what ought to be left undone at any given time, men are able to act effectively on the environment and

on fellow-men. The energy they use may not be their own; what they do may be minor and merely instrumental. But they become members of an empowered class just so far as they together are in control of the energies of all.

The most powerful class is that which is often economically advantaged. It need not be. It is possible to be a member of it though impoverished, and the entire class itself may have few possessions. Power belongs to it just so far as others yield to it, whether they need to yield to it or not. Control of the energies of all is thus not necessarily the outcome of activity; it may be in good part the expression of a receptivity and passivity, a deference on the part of others. And the deference may be merely to demands to which men yield because they have been accustomed to defer, inclined to defer, or merely wish to avoid the consequences which would ensue if they did not defer.

The empowered class may act to the benefit or injury of other classes and their members. It may be wise or foolish, have a dignified status or not. It may be made up of slaves or workers, and make much or little use of the energy at its disposal. But though the members of it may in fact be puny and insignificant it is proper to speak of them as men of power. And though they may be intellectuals or act through the manipulation of switches and remote controls, they are primarily men who are occupied with the use of bodies and what these can master. They relieve the tension that exists

between men as private natures and as members of a public, by reorganizing themselves as bodies. If they individually fail to produce such a unification in themselves, they at least represent it for others, and enable others to achieve it for themselves through the instrumentality of their efforts. They differ from the rest of men then primarily in the fact that they have reduced to a comparative minimum the opposition that exists between bodies as privately conditioned and as publicly structured and defined. This does not mean that they are better adjusted than others, more adroit, or more aware of the needs and powers and limits of bodies. It means only that they are occupied with and are in control of the agencies which permit of a unification of human bodies having a private and a public side.

### 3. THE CLASS OF REASONABLE MEN

As a rule a reasonable man is a middling, middle-aged man, one of the steadier, habituated members of a society. He is the embodiment of good sense, a man whose knowledge and interests define what it means to be socially intelligent. He is not necessarily more powerful or more valued than others. There are times when more violent and more effervescent men, younger and older men, more extreme types enjoy greater esteem.

The reasonable man is one to whom others appeal

for guidance. He is the man to whom we look to help us decide what it is right to do. Deviations from what he represents are deviations from sanity and knowledge. He knows what ought to be expected from an act in that society, and that he who fails to act in terms of such an expectation does not belong to that society. From the standpoint of the reasonable man the latter is a God or a beast, a madman or a fool.

The reasonable man is the man whom the late Mr. Justice Holmes seems to have had in mind as a model for himself and others in the course of his long career. He asked himself constantly whether or not the acts he was examining had a tendency to produce public harm, i.e., to produce discord in representative reasonable men. He went so far as to suggest that even in criminal cases all questions of motive and intent, all questions of the ends which the agent had in mind or the results he wished to bring about should be replaced by questions as to what a reasonable man could expect. The reasonable man he took to be one who knew and acted in terms of the most likely good and bad consequences in a society which would flow from an act most advantageous to himself. He held that a man was accountable for the harmful consequences which normal and mature men in that society expected would follow from his act, and this regardless of whether he intended or desired those consequences. "Public policy sacrifices the individual to the general good. . . . Liability is said to arise out of such con-

duct as would be blameworthy in an average man, a man of ordinary intelligence, and reasonable prudence. . . . As the purpose [of the law] is to compel men to abstain from dangerous conduct and not merely to restrain them from evil inclinations, the law requires them to know the law. Subject to these explanations it may be said that the test of murder is the degree of danger to life attending the act under the known circumstances of the case. . . .”

Although Justice Holmes was thinking about the law, and although he was occupied with problems in connection with highly organized groups and particularly those in the Anglo-American world, his point of view can be extended to provide a basis for understanding the need for a reasonable class. In every society it is desirable to look to the reasonable class in order to have a publicly determinable ground for deciding what it is wise and right to do or to avoid.

It is, to be sure, extremely difficult to know what “reasonableness” allows or forbids. To state the matter paradoxically, we must be “reasonable” in our understanding of what it means, and above all must avoid confusing it with the idea of being rational. As Aristotle observed, a reasonable man ought to expect no more exactitude in a given field than that field requires.\* Rea-

\* Holmes held that “it cannot, in general, be assumed from the mere doing of what has been done that the [harmful] acts would have followed if the actor had not been interrupted.” This is true. But it must not be forgotten that there are acts

sonableness is knowledge and activity adjusted to the connections between socially significant events. It is as much a matter of experience and insight into the tempers of men as it is a matter of reflection, knowledge of laws, and detached understanding.

If a harmful result occurs, men are accountable to other members of their group, could one of them have foreseen the result while calling on no greater powers than those possessed and regularly used by other members in similar circumstances. A man ought to know that shooting a gun in a crowded theater might produce a panic; but also that it is possible that such shooting might occur. Consequently, theater owners have a responsibility to take precautions against such an occurrence, just as the rest have a responsibility neither to engage in the activity nor to allow it to proceed.

Men who do not know what acts produce ill effects in a given society are, with respect to that group, not sane. They must be reconditioned. Men who do not care what acts are productive of ill effects there are not decent. They must be disciplined and educated. The members of a class of reasonable men are sane and decent; they know and care what acts are pro-

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even in Holmes' legal order, such as the purchase of dies for the making of counterfeit coins, which, if they go no further, are harmless in themselves and yet are legally punishable. It is reasonable to expect that such acts will be followed by actually harmful ones.

ductive of ill effects in their society. As a consequence they try to live and speak in such a way as to make evident that what is productive of ill effects on others can, through the acts of some of those others, be expected to have ill effects on the agents themselves.

The reasonable man is a tissue of expectations which provide a basis for determining whether an act should be done or not. He knows that such and such an act, harmful or harmless in itself, will have such and such desirable or disagreeable effects on others. As a consequence he approves or disapproves of it. The very continuance of the society depends on the fact that most of its members are reasonable to some degree, taking their cue from the members of the class of reasonable men.

#### 4. THE PRESTIGIOUS CLASS

The members of the empowered class offer crucial places where the power of the society is focused, employed, and controlled. The members of the reasonable class are primarily expectative men who are aware of the rhythms of nature so far as they have bearing on the activities of socialized men. The members of neither of these classes may know or be concerned with what ought to be. They make no claim to answer to the spirit of the group; they make no claim to bring about what

is good for each or for all. The power may be used to hurt one another, the reasonable course may be one which cannot be defended rationally; the lead of both classes may be accepted by all the rest even though they in effect promote the ruination of the society. Fortunately there usually are some men within a society who devote themselves to making manifest what they take to be the value which pervades the whole group and the world beyond it. By acting in terms of the sense of importance which the group expressed in the past and seems to be expressing in the present, they make effective in speech and ceremonial the values of which the rest should take account.

Priests and teachers, poets and sages act not primarily in habitual ways as the empowered and reasonable men do, but rather through a determination to restructure their own and other activities so that these become the locus of desirable values. Without necessarily enjoying any particular power, and sometimes even without much prestige, they function in a society on behalf of its traditionalized and incipient values.

Prestige is largely a matter of tradition and of successful acceptance. The virtues shared by all or most are exemplified or urged by only a few to a high degree. They may not be the most desirable virtues. But so far as they are looked to by the rest as ones which ought to be exhibited by the best men in that society, they are the standard virtues. Those who urge them

in their persons or through their agencies are members of the prestigious class.

The prestigious class offers a test of what is important and what is not. It expresses itself in attitudes and expressions of approval and disapproval which are no less effective in determining the ways of other men than are appeals to reason or the use of force. Others defer to it for many reasons, not the least being the fact that they find the position of prominence and decision onerous, even though the virtues urged are admitted to be superior to others. In the last resort the members of the prestigious group enjoy the status of beings who express for the most part the beliefs and values cherished though not necessarily followed by themselves or the rest.

## 5. THE PRODUCTIVE CLASS

The members of the empowered, the reasonable, and the prestigious classes do not necessarily do anything indispensable to the continuation of the society. To be sure, if the power is improperly used, men might be injured, dangers not averted, and destruction courted; if the reasonable class violates the expectations of one who knows something of the laws of nature, it will but lead to folly and the society's eventual disappearance; if the prestigious class stresses what in fact is unimportant, energies will be wasted and the society will

not be prepared for more important demands in crises. For the most part, though, these classes are but pivots and guides. All of them depend on the fact that there is a class of men who are engaged in production, and this not solely for themselves but, in the end, for all the members of the society.

Members of the productive class may, individually and together, be men of little power. They could be slaves. Nor are they necessarily reasonable, since they may have their own local superstitions and ways of acting which the others find foolish. They are not necessarily prestigious; the group may prefer leisure and its activities to productive work, no matter how much this is needed and desirable. In the history of the world so far it seems as if the class of the productive has often been the least prestigious, the least reasonable, and the least powerful. But this need not always be.

As the Marxists see, a dynamic society is best represented by the productive class. But what they sometimes fail to see is that this productive class is made up not only of workers but of other types of men as well. Soldiers and other "useless" men, men who do not produce instruments or products of sustenance, also are productive. Nor is it the case that other non-productive classes are unnecessary, or that they are derivative from the productive. No one class is ever sufficient. No one class should ever triumph. It is never desirable to eliminate all classes whatsoever; one ought not to prevent their independent functioning. A mature society needs all four.

## 6. SOCIAL LAW

A society has a nature which affects and qualifies the classes and men within it, and the work they do. That nature has sometimes been called the temper or spirit of the society. It has the role of a norm for individual men; they are out of tune with the society, not yet full members of it just so far as they fail to live in consonance with it. It functions as a norm too for its various classes and other subdivisions; these are divisive or utopian just so far as they insist on their individual patterns in the face of the temper of the society as a whole.

Every subdivision of a society, and particularly every class, provides a norm of its own. That norm expresses the nature or temper of the subsociety or class. It may not be followed to any great degree by other members of the larger society, and it may not be in consonance with that of the larger society.

There are then at least two types of norm in a society; that provided by the unitary nature of the society, and that provided by its various subdivisions. The former is exhibited by every being just so far as it is a member of the whole society; it makes a demand that is always fulfilled by full-fledged members and which others—the young, the weak, the rebellious—are being helped or forced to meet. The other type of norm, in contrast, may be exhibited by only some of the full-

fledged members of the society, and not necessarily by the society as a whole.

Classes offer possibly unfulfilled social ideals for the society and for other classes. If those social ideals are accepted and submitted to by the rest of the society, the temper of the society as a whole will express something of the respect and conformity which the various parts of that society exhibit toward one another. When this occurs the society is governed by a social law. Social law is thus the nature or temper of a society produced by the mutual submission of subgroups to the ideals they offer one another.

Social law is a mosaic of accepted customs, conventions, habitual ways of evaluating, responding, and acting. It expresses what men are accustomed to do without necessary guidance by codes or formal statements. No actual society is ever entirely without such law, for then it would be wholly chaotic. But, also, none is wholly governed by such a law, for none is without its nonconformists, its crimes and violations, without over-insistent as well as comparatively neglected classes.

Because the social law is not expressed in any explicit document, lawyers in our modern developed states are inclined to look for it in the preceding decisions of judges. But it is not to be forgotten that social law is inseparable from social practices. Those who cling to the idea of the decision of the judges as alone constituting the body of social law are faced

with the difficulty of being unable to offer a test and basis for criticizing those judges. Judges sometimes go counter to the temper of their society. Also, past cases never suffice to determine what ought to be said in a new case, particularly since the latter inevitably raises some points not covered by the old. Time inexorably produces changes in circumstance; to ignore this fact is to allow past wisdom to corrupt present justice.

No codification ever succeeds in encompassing the whole of social law. This is incapable, without violence, of being separated from actual attitudes and practices, themselves never fully expressed, rooted as they are in habits not yet wholly determinate, wholly manifest. Yet if a society is to be steady yet flexible, if its practices are to be at once equitable and intelligible, it should articulately and effectively insist that its members behave in certain ways. Positive law, a law promulgated by authoritative bodies, backed by force and interpreted by judges, provides one way of satisfying the need of a society to be more effective, just, and adjustable to circumstances and the needs of men than social law permits. Its proper functions and limitations cannot be understood, however, unless we know whether or not men have native rights, whether or not these are alienable by law or otherwise, and how they are to be satisfied.

## 2. *Man's Native Rights*

### 1. THE BILL OF RIGHTS

NO MATTER how deeply immersed in a group a man may be, no matter how much of his time and attention are devoted to the life of his society, he does not there adequately express and satisfy a number of essential demands, i.e., native rights.

Though almost all men today are, at least in our society and outside the arena of academic disputes, convinced that men have such native rights, there is little agreement as to just what those rights are. No one seems sure that he knows just what rights men have. No one seems to know just how men have come to have rights, and whether or not those rights can be justly denied or qualified.

The American Declaration of Independence exhibits no hesitation on some of these points. It does not doubt in the slightest that men have rights, that some of these

rights are known, and that they are supernaturally bestowed. "We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable rights, that among these are Life, Liberty and the pursuit of Happiness."

The Declaration of Independence does not, however, explicitly deal with the question whether or not anyone—a sovereign power, individuals, the several states, or a society—might not justly alienate the rights which all men are said to have. Its reference to self-evidence and to the Creator would seem to indicate, however, that the Declaration intends to maintain that it would be wrong for anyone, for individuals no less than for a sovereign, for the separate colonies no less than for a federation of states, to deny a man's right to life, liberty, or the pursuit of happiness.

The Constitution of the United States is neither as forthright nor as clear as the Declaration of Independence—not even in its so-called Bill of Rights, contained in the first ten amendments. The Constitution does, to be sure, say that "Congress shall make no law . . . abridging the *right* of the people peaceably to assemble, and to petition the Government for a redress of grievances" (Amendment I); ". . . the *right* of the people to keep and bear Arms shall not be infringed" (Amendment II); "The *right* of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated. . . ."

(Amendment IV); “. . . the accused shall enjoy the *right* to a speedy and public trial. . . .” (Amendment VI). (My italics.) And other portions of these quoted Amendments, and other Articles as well, though they do not contain the word “right,” seem quite clearly to refer to rights which the United States is being pledged to respect. Amendment VIII, for example, reads “Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.” There would be no error, I think, in understanding this to be identical in import with the statement that “The people have the *right* to a moderation in bail and fines, and to reasonableness in punishment.”

The Constitution, in these Amendments, provides a more extensive and particularized set of rights than that given in the Declaration of Independence. But it avoids making any claim to truth or self-evidence, and does not attempt to tell us of the origin of the specified rights. And even more important, it never explicitly says that any of the rights are unalienable. The furthest it goes is in Amendment IX: “The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.” This Amendment is most perplexing. What enumeration? Are the “certain rights” it mentions supposed to be rights which belong to the United States or rights which belong to the people? There are no rights of the United States or the people actually mentioned in the body of the Constitution. The only rights

that are explicitly mentioned are to be found in the Amendments, quoted above. Scholars and lawyers seem to favor the view that what is intended by the expression, "The enumeration . . . of certain rights . . ." is a reference to "rights" which the people granted or allowed to the United States. To make their point, it will be necessary though to interpret "power" as equivalent to "right," for the Constitution mentions only governmental "powers" and never any governmental "rights." "The Congress shall have *Power* to lay and collect Taxes . . . to pay the Debts . . . to borrow Money . . . to establish Post Offices and Post Roads, etc." (Article I, section 8); "The executive *Power* shall be vested in a President. . . ." (Article II, section 1); ". . . He shall have *Power* . . . to make Treaties. . . ." (Article II, section 2). (My italics.) And so on.

More important, it is not clear just what is meant by "the enumeration . . . of certain rights, shall not be construed to deny or disparage *others*. . . ." What others? Does the Constitution suppose that men have rights in addition to those which the previous Amendments say men have? Are these rights supposed to be unalienable; are they rights which it would be legally and perhaps also morally wrong for the state to cancel or to limit? \* Does the Constitution suppose that men have these rights apart from, and perhaps even in op-

\* An unalienable right is not necessarily an inalienable right. The former ought not to be, the latter cannot be alienated. Unfortunately, what ought not to be alienated sometimes is alienated; unalienable rights may be alienable.

position to, the state? Does it therefore grant that men have rights which the United States can never justly alienate? Or does it merely admit that men have rights which the United States is then and there forbidden to alienate? And does it forbid individual states to alienate those rights, or does it, instead, allow the individual states to do anything at all, providing it is not expressly forbidden to them in the Constitution? These are serious perplexities. No matter how they be resolved, it will still be an open question as to whether or not individual men, severally or together, can, outside the area of the law, alienate whatever rights they have, even for the sake of acquiring benefits of equal or greater value. The Constitution gives us little help in understanding what rights we have, whether or not they are alienable, and who, granted that they were alienable, can alienate them.

I have, however, been assured by a number of United States judges that they and their colleagues always understand Amendment IX of the Constitution, "The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people," to mean that whatever rights individual men happen to have at the time that the amendment was adopted, and which were then not given up, were retained by the people for an unspecified time—a time which could be brought to an end by a constitutional decision. On this view men have native rights but retain them only because and only so far

as the state grants them the privilege. At that juncture of history when the Bill of Rights was forged, they think, the privilege had to be granted. If it were not granted, it is said, the individual states would most likely have refused to accept the proposed Constitution. Circumstances, this theory continues, have changed and will continue to change; there can come a time when the privilege of having such and such rights, and perhaps any rights at all, might be withdrawn. The Constitution, say these judges, could be amended at any time in such a way as to abrogate every one of the enumerated or retained rights. The ninth Amendment therefore cannot be viewed as offering any support for the doctrine of unalienable rights.

The opinion of these judges expresses, I think, what is hard but good law. It allows legislatures, courts, states, and voters to determine, according to the needs of the day, in just what public areas men are to be permitted to act unmolested, where they are to be restrained, and where they are to be forbidden entry or action. Still, it is hard to avoid a feeling of disquiet. We would have to be quite cavalier with history and with the intent of the founders of the United States to make as radical a distinction between the views of the Declaration of Independence and the Constitution with its Bill of Rights, as this view requires. We would have to ignore the natural law positions and the religious and ethical outlooks of the thinkers of those days. And if one were to urge that we are

now more enlightened than those who wrought and voted on the original documents, and that, despite all talk about precedent, we must constantly interpret the Bill of Rights afresh, we would be faced with the fact that it makes sense to say that a constitutionally respectable law can, as a matter of fact, be then and there bad, immoral, mistaken, unjust. It could endorse slavery, cannibalism, a caste system, special privileges, gas chambers. But the outlook of the judges with whom I spoke does not permit of such a contention, since whatever is constitutionally decided is, according to them, beyond assessment, except by some later constitutional decision.

Not everything that a Constitution enjoins or permits ought to be. It does not always decree what is good for men, the society or state. There are limits to what it ought to demand. A just man will look beyond the letter of the Constitution and beyond the most explicit constitutional decisions when he finds that they literally require the denial to a man of what, on other grounds, is known to be that man's right. That there might be such a right no judge of course knows in his capacity as official interpreter of the Constitution. But the judge is also a man, which is to say, he like us gives at least a tacitly affirmative answer to the question as to whether or not men have rights over against society and the state. Like the rest of us, he looks beyond, not only the Declaration of Independence, but the Constitution, and whatever these allow

and prescribe, to the nature of man and the claims which that nature entrains.

## 2. BESTOWED RIGHTS

A. I. Melden, in *Science, Language and Human Rights*, argues that "what is inseparably involved in the existence of man is his existence—his life. But what is at issue is the normative statement that man has the *right* to life, and this surely does not follow from the trivial consideration that he is alive." This argument is plausible only if human existence is a brute, detached fact, making no warranted claim to continue or to prosper. But a right is a justified claim, depending for its existence on the nature and powers of men. This nature and these powers need and deserve to be expressed and sustained. They and the human rights which they ground can no more be separated from him than he can be separated from need and appetite, oxygen, food, and environment.

Men have rights. Of this we are sure. But it is not altogether clear whether or not some of the rights are native; it is not altogether clear whether or not all are bestowed, given permanently or temporarily to men by some power, divine or otherwise.

What follows from the very nature that a man has is a native right; what does not so follow is what we must suppose to have been bestowed. To support a

theory of bestowal at a later date in the history of mankind, we would need historical evidence in the form of grants, declarations, constitutions, legislations, decisions of the courts, and the conventions of common practice—or at the very least in the form of some indication that there is a difference in the rights men once possessed and the rights they later possessed. What could not be so shown to have been bestowed would have to be viewed either as a native, unalienable right, or as an idle claim, a hope or plan, not a right at all.

A good God would bestow one set of rights, a wicked spirit another. Were the rights alienable they could be withdrawn at any time, and with justice. A God would undoubtedly have bestowed such alienable rights out of a spirit of generosity, but this would not preclude his taking those rights away at some later time. He would do this, of course, only in order to promote the good, while a wicked spirit would take such rights away for an opposite reason. A state most likely would bestow a different set of rights on men from those granted by a spirit, good or bad. Its reasons for doing so might take one of a number of forms. It might act out of generosity, giving men what rights they need in order to prosper—or more likely, and as the political history of much of the Western world testifies, it might bestow rights only when and so far as the people compelled it to do so. But whichever way and from whatever source the rights were bestowed, they evidently

would vary in strength, kind, and number in the course of time. If bestowed generously by the state their natures would require reference to the nature of men and perhaps to the purpose of the state; if bestowed by the state under compulsion, they would vary in accord with the nature and temper of the state, and with the degree of force to which men subjected it.

Bestowed rights could be unalienable, and this whether bestowed on men out of necessity or out of prudence, at the beginning of the human race, at the beginning of individual careers, or at other times. If the bestower were a God or state it might have the power to take back what it gave. But if it were just, it would never take them back if they were rights which men needed or deserved. Whatever rights are essential to man's welfare or answer to vital powers are beyond a just recovery.

That there are bestowed alienable rights, it would be difficult to deny. But this does not compromise the fact that there are other rights as well, answering to the nature which men have, in themselves and apart from the public power to which they must give an account. A theory to the effect that *all* rights are bestowed and alienable is one which supposes that men are made entirely from the outside and possess no intrinsically grounded claims. It is a theory which can find nothing wrong in what a state might do with men. Though it could criticize a state for getting in its own light, for making bestowals in such a way as to injure itself,

the theory does not make it possible to claim that a state can ever deal unjustly with men.

If all unalienable rights are bestowed, men, as apart from such bestowals, will be abstractions, not substantial enough to have any rights, or valueless, not yet ready to exercise rights. In addition, if the rights are bestowed, a bestower must be presupposed. That bestower either (a) will create rights in man, or (b) will transfer some part of its own rights to men (retaining as it were those rights not expressly given to the people). Neither alternative is tenable.

(a) If a bestower creates rights, those rights will either be made integral to the natures of men or will remain adventitious to those natures. If made integral, they will be unalienable in the sense that any alteration in those rights will be tantamount to an alteration in the natures of the men; so long as men are men of the same type as before, those rights will be theirs. The rights will in fact really be identical with native rights. If, on the other hand, the supposed bestowed rights were not made integral to the natures of men, their possession or loss would affect men only indirectly, through a determination of the ways the men are permitted to act. They would not really be unalienable. Unalienable rights are integral rights, rights which are native to whatever natures men have.

(b) Since a right answers to the nature, power, or value which a being has, if rights are bestowed through an act of transfer, men must be like the bestower. If

they receive rights by a transfer from God, they will in that act be made divine, since they will then obtain an essential feature of divinity. Since these rights, on the hypothesis, are, moreover, not intrinsically man's, men will be made into carriers of rights none of which is pertinent to them as men. In effect this means that men will be denied to have any rights of their own.

If all man's unalienable rights were transferred to him from a sovereign state he must be a sovereign unit like a state both before and after the act of transfer. But men and states are quite different in kind. Men have feelings and states have not. Men live and die, states just come to be and pass away. Even when a man assumes the shape of a king or a tyrant, the rights he has in those guises are quite different from the rights he and his subjects have and could have as individual men. As a ruler a man has the right to decide, to organize, to defend, to legislate; as an individual he has the right to life, liberty, and the pursuit of happiness. If any one therefore is to receive rights by transfer from a sovereign state, he must be a kind of sovereign; otherwise he will not be able to provide a proper receptacle for the rights which that sovereign is transferring. But if the individual is a sovereign already, why should he not have sovereign rights of his own, rights which flow from the nature or status that he has as sovereign?

Men might conceivably become units of sovereignty through the act of the state. But they have rights in-

dependently of such an occurrence. Babies, hermits, idiots, strangers, and aliens have rights; they are not, they have not yet been made into units of sovereignty by any sovereign; they do not acquire rights by transfer from any power. And even fully grown normal men are always something less and something more than sovereign units. No one of them ever fits neatly inside a political whole, or perfectly represents or reproduces one. Each has a private mind, hopes, will, religious and artistic impulses, intentions, and beliefs which keep him from being a mere political unit. So far as this is true, no theory of transferred rights could do full justice to the facts.

If men have rights only as a result of a transfer, there could be no just warrant for limiting what the whole could or should do to them. With justice there could be transferred to them any rights at all and under any circumstances; men could be made into political units in any way the sovereign desired. And then, with equal warrant, the sovereign if it wished could endow other beings—animals for example, and even inanimate things—with rights, and deny all rights to men. The transfers in this imagined case—not too alien to the facts of history—would require the sovereign to view the animals and things as sovereigns of a kind, as loci of political power and decision. Absurd though this idea may strike us today, it is no more absurd in principle than what for us is the more congenial idea of non-political men being made into political entities through

the transfer of rights by a sovereign power. The change of a nonpolitical man into a sovereign unit is not more radical than the change of a nonpolitical animal into a sovereign one. It is only our current mythology in politics, over against an opposing view in biology, to the effect that there is a sharp difference between the social human and the social subhuman, that makes the idea of a sovereign animal seem absurd and the idea of a sovereign man plausible, each being created out of a nonpolitical being through the transfer of rights. In other lands, it seems just as clear that some of the beings we deem to be lower than man are in fact higher, since they are more immediate, innocent, more deeply immersed in existence. In these lands, the idea of a sovereign animal is not too strange. But this is a mythological view. Both it and the other distort the facts; nonsovereign beings, whether animals or men, cannot acquire all their rights by transfer.

Bestowed rights, alienable or unalienable, produced then and there or transferred, are rights which have no proper grip on the nature of man. If these were the only rights men had, men would not even have the right to be parts of political wholes, and surely would never have the right to oppose their own state or to criticize it. A newly constituted state could give men certain rights, and not others, or give rights to what is not human and deny them to man, or conversely. The rights it gave might be unalienable in the sense that they could not be justly withdrawn or qualified,

but they would not necessarily have anything to do with the natures of men and the claims they natively make. But men have natures, and these make rightful claims. They test the justice of states, even of those newly constituted.

If, with the totalitarians, one affirms that the whole is always right so long as it effectively maintains or strengthens itself, or if one agrees with the legalists that the state is always right so long as it is consistent and clear, no debasement of human beings, no suppression or enslavement of them, no decision as to their use by the whole would be open to adverse moral judgment. Their states might grant men rights at various times, and withdraw them at other times. To be sure, if a state granted rights that it had not previously acknowledged it might be criticized as being unstable. But such instability might be but the prelude to the establishment of stability. If it denied men the rights they thought they had, it might be said to be unwise. But there is also a kind of folly in letting men have whatever rights they claim to have. A denial of rights might enable men to work better together, to be more industrious, to be less self-centered. If it withdrew rights it once granted, it could be criticized for inconsistency, and where the rights are unalienable, of injustice as well. Yet the state could still have a case. It could make a virtue of its willingness to abandon what it once acknowledged, for the sake of achieving higher goods. Progress demands change; so do the varying circumstances of history.

Instability, folly, inconsistency, injustice ought, sooner or later, to prove fatal to any power. Granted that this is the case—unless injury to the state is identical with ethical and political wrong—there need be nothing amiss if a state should pass away as a consequence of the fact that it was unstable, foolish, inconsistent, or unjust. Nor is it evident that it is always bad to have a poorly working state, or one that was quite impotent, or which persisted for only a short time. A poorly organized, an inefficient state might allow for more leadership. An impotent state might allow for more cooperation. A short-lived state might allow for more refreshment and reformation than its opposite could. The fact then that a state bestowed or refused to recognize certain rights and suffered thereby would not show that the rights ought or ought not to be protected and supported.

If there is some activity, status, or power which the state ought to respect, if even those who are not members of a state have just claims against it at times, if it is possible for a state to be unjust, immoral, or perverse in relation to its members, it must be true that men have native rights. In terms of these whatever a state or some representative of it affirms, whatever it decrees through a court, legislature, or officer can be evaluated, and this regardless of the fact that the state is thereby made inefficient, ineffective, or short-lived, or the reverse. We must affirm that men have native rights or give up the view that the state could possibly use or abuse men in unjustifiable ways. Unless

there is no constancy or commonality to man, unless men enjoy no separate status or value-entraining claims, unless there is nothing in man which ought to be respected, we must affirm that he has native rights.

A native right is a right integral to, inseparable from the substance and nature or essential functions of a man. It need not be unalienable. It might be justly abrogated, added to, or qualified, to keep abreast of changes in men. Now men do change in their rhythms, habits, interests, powers, directions; of this there can be little doubt. Each also reorganizes himself constantly, giving new meaning and role to his different parts and functions. As a social being, each fits inside transient and distinctive frames of limited groups. Each is in good part a localization, a congealed delimitation, a function of his society and state. As he changes in role and meaning some at least of his rights must change as well. But men also have well demarcated functions which they exhibit constantly; and as far as they do, they have constant native rights—which may, for different reasons and in a different sense, also be alienable.

### 3. LISTS OF RIGHTS

Men have constant native rights. Many writers have taken note of this fact. The rights they acknowledge are, however, numerous and diverse. The three-fold list

on pages 63-64, culled from various sources,<sup>o</sup> makes this clear.

Other classifications than these are certainly possible, but this particular one seems to allow for the most effective way of bringing what seems to be an ungovernable heterogeneity into some kind of order. A "right to" refers to a power in man which deserves expression. Such "rights to," it will be noticed, are more numerous than "rights from" and "rights of," seem to be presupposed by the others, and to point toward man's inward nature, the locus of his unalienable rights. A "right from," in contrast, refers to the individual as standing over against other realities; it is a right defined in terms of the possible intrusions and injuries of others. A "right of," finally, is a consequence of some actual feature or value; it expresses the claim of some vital part or power of man to make itself manifest. A "right to," strictly speaking, begins from within, a "right from"

RIGHT TO	RIGHT FROM	RIGHT OF
Believe	Arbitrary arrest	Assembly
Citizenship	Arbitrary exile	Body
Cultural existence	Battery	Communication
Education	Disease	Conscience
Enjoyment	Dishonor	Consideration
Equality	Exploitation	Consumption
Existence	Fear	Creative expression

<sup>o</sup> Particularly Appendix I and II in *Human Rights, A Symposium*, edited by Unesco; J. Maritain, *Man and the State*, chap. 4; my *Man's Freedom*, p. 274.

*Right to**Right from**Right of*

Fair price  
 Fair trial  
 Familial life  
 Food  
 Freedom  
 Friendship  
 Growth  
 Health  
 Inquiry  
 Judge  
 Justice  
 Knowledge  
 Language  
 Legal recognition  
 Leisure  
 Liberty  
 Maintenance  
 Marriage  
 Moral life  
 Paternity  
 Personal integrity  
 Political action  
 Pursuit of happiness  
 Pursuit of perfection  
 Religion  
 Religious vocation  
 Responsibility  
 Rest  
 Security  
 Shelter  
 Sympathy  
 Travel  
 Trade  
 Worship  
 Work

Hunger  
 Injury  
 Pain  
 Restraint  
 Seizure  
 Slander  
 Slavery  
 Torture  
 Violence  
 Want

Free choice of  
     commodities  
 Kinship  
 Life  
 Movement  
 Possession  
 Property  
 Rebellion  
 Self-expression  
 Speech  
 Thought  
 Vocation

begins from without, and a "right of" is a feature of man as at once a private and a public being. If such distinctions were strictly maintained some items on the above lists might be put on others, and a number of additions and subtractions would seem to be required.

#### 4. THE NATIVE RIGHTS

Lists such as the above, even when divided into rights "of," "from," and "to," do not reveal any principle or arrangement in terms of which it is possible to see what should and should not be included, nor do they distinguish private and civil rights. To determine what rights there are, it is necessary to distinguish the essential features characteristic of every man. Man's native rights are the claims inevitably made by him by virtue of what he is. He, and his essential parts and capacities, have a right to be, and to be fulfilled. This requires us to say that in one sense a man has only one right, that in a second sense he has an indeterminate number of rights, and that in still a third sense he has a limited but definite set of rights.

So far as a man is a single, indivisible, unitary being, with no really distinct parts or capacities, he can have only one right. Each man has a constant nature, maintained from birth to death; each shares with other men, no matter where or when, a nature contrasting with the natures characteristic of other types of being. We

know that we are all equally men, and that some of us are abused and perverted by the transient forms which a society makes us assume. Were we to deny this, we would have to say not only that there were Greeks in contrast with Romans and with ourselves, but that the Greeks at one particular date and place were distinct in nature from Greeks at other dates and places. And since every society contains a multitude of subsocieties not altogether in gear with the larger society or with one another, we would have to say that at all places and times there are different kinds of beings which we somewhat rudely classify with others, and which we somewhat incorrectly hold to possess the same group of rights. We would have to say that men in fact shared only adventitious features with one another, so that only chance, no less surprising because so persistently successful, would allow us to infer that what was true of one individual at one moment was true of him at the next and true of others as well. Laws, since they refer to more than one individual, would then express in part a decision to make arbitrary abstractions from real differences. They would be conventions, not merely in the sense that what they urged might be replaced by others, without affecting anything real, but that what they affirmed or denied would be without relevance to the being of men. At best one could maintain only that the law itself created and defined the common nature of man, and that outside the law men were radically diverse individuals, having nothing important in com-

mon. As a consequence all laws would be unjust, forcing incomparable individuals into arbitrary groups in which they would be treated in arbitrarily similar ways.

Man's one right is the right to be a man. But this right is general, unspecific; it cannot be used or supported unless it is qualified by more specific rights. As a living, constantly altering and adjusting being, expressing himself in changing ways all the time, a man must be said to be the locus of an indeterminate number of specific rights. These, however, melt one into the other, and give no purchase for a grasp of what a man is or requires. Men must be recognized therefore also to have a limited, definite set of rights. To know what these are it is necessary to know just what are the indestructible, indispensable features of man, to deny which is to inhibit, to frustrate him.

A man has a body, mind, will, and emotions. Each of these has its own nature, needs, and rights. He who hinders the functioning of one of these four, he who does not act to promote their realization or satisfaction, does less good than he should. There are thinkers, to be sure, who have denied each one of these sides of man, and not altogether without warrant. The body is a changing thing, transitory and complex, whereas man is single; a mind is not directly encountered and is known only so far as it makes itself publicly manifest in bodily activities; a will is never found distinct from the strongest manifest impulse or tendency; emotions seem

to be adequately encompassed in any account which deals only with body or mind or will. Despite these formidable observations, it is, I think, necessary to affirm all four.

To deny that a man has a body is to see no possibility of murder. To deny that he has rights to his body is to see no wrong in murder. Those who reject the reality of the body, or the possession by man of a body, come close to making these two denials. But in the end they withdraw from the consequence. In the Bhagavad-Gita it is said that there is no real distinction between killing and non-killing; Plotinus, with Plato, says that one should try to separate one's soul from one's body. But all three of them reject the idea that the loss of body results in nothing but gain to the real man.

The body is somewhat difficult to locate. This palpable thing of flesh and bone, this forked, erect, moving thing can of course be pointed out as existing at this time and at this place. But on the one side it is a body which merely delimits a larger world about, a being pushed and pulled, shaped and ruled by other agencies, a part of a world of bodies, moving according to the laws which govern them and other things as well. And on the other side it is something privately owned, *my* body, quickened, ruled, ennobled, and unified from within. Because the body is at once mine and the world's it is a body which strictly speaking belongs to neither of us—or to both. It is also true that it owns me, and that as it suffers and acts I keep somewhat abreast.

My disapprovals are faint and slack; they make it hesitate if at all only slightly and then no more and often much less than others do. It is no mere locus for external forces to come to expression, no point at which what is alien converges and exhibits itself without hindrance; it is a palpable, resistant and insistent reality through which all action passes and is sustained.

To deny that a man has a mind is to see no possibility of error; to deny that a man has rights to his mind is to see no wrong in deception. Yet there are men who deny that there are minds; they claim to find only modes of behavior and language. Errors for them must presumably reduce to inefficiency or inconsistency in the use of body or of such bodily expressions as sounds and words. But since these men abjure such accounts as this study as being mistaken, and reject it as what ought not to be believed, they too in some way reaffirm that there are minds and that these ought not to be deceived.

The mind we tend to locate somewhere inside us, perhaps in or around the brain. Some, with Locke, would say that, when not engaged in veridical perception, we have no identity and perhaps no being as individual men except so far as we continue to exercise our minds in memory, dream, and fancy. But "mind" is also equivalent to "public meaning," "knowable structure," the "objective rationale" of things in relation to one another. Mind, then, is as surely public as it is private. But it is also somewhere in between. There is privacy behind it, individual and idiosyncratic, and

there is a public world beyond it, the very bodies it organizes and gives meaning to.

To deny that a man has a will is to see no possibility of decision. To deny that a man has rights to his will is to see no wrong in subjugation. Those who deny that there are wills, or who reduce them to a mode of expression of the mind or body, without independent nature, must treat decision either as an inseparable product of a mental situation—and this is what Spinoza does—or as a resultant, without necessary aim or direction, of an interplay of bodily tendencies—and this is what Hobbes does. There are, for neither of them, decisions made outside the mind and body, to which the mind and body may submit. But then the one cannot explain how it is that he has something definite which he wanted his body to do, such as writing out what he had previously thought about, whereas the other cannot explain how it is that he can decide to think about the way his body functions.

The will, like the body and the mind, has a triple locus. It is surely private. No one of us can see another will; we find it hard to discover ourselves in the act of willing anything. We know we have wills only so far as we know that our private minds and bodies are sometimes discrepant in tendency and act, and that we direct ourselves to an object as that at which they both must converge. When either the mind or the body is held steady, the body or mind must conform so as to be able to converge at the point where the mind or body is

directed. But the will is in a way public, too. We distinguish what we wish from what we will by virtue of what we are committed to and with what we publicly begin. Only so far as a private decision issues into some activity we can be said to will what we decide; a completely ineffective will is no will at all. To will it is necessary that something be brought about. Finally, the will is also somewhere in between the private, hidden deciding, which is the will in being and in action, and the will as having come to expression in this way or that.

Finally, to deny that a man is emotional is to see him without active sensibility. To deny that he has rights as an emotional being is to see no wrong in a violation of his feelings. Because a man has emotions he has a right to personality. The fact that his emotions cloud his mind, that they are expressed through his body, and are a major topic for his will, tempts many to reduce them to one or the other of these. But the reduction is accompanied with such heat that the denial is in effect a reinstatement of the emotions as having a role and effect distinct from the body, mind, or will.

The body, the mind, the will, the emotions are private, public, and in between, which is but to say we are in all three positions all the time. We sit at the center of the world radiating out and possessing all else as our limits; all other things offer permanent barriers to our actions and knowledge; and we live in between these extremes, at once playing a role in the world

and making manifest something of our inward natures. Our native rights answer to the distinctive natures of body, mind, will, and emotions, and to the areas, private, public, and in between, where these are active. Those rights deserve satisfaction. But are they unalienable?

### *3. The Alienation of Rights*

#### 1. ABSOLUTE UNALIENABILITY

MEN, POSSESSORS of body, mind, will, and emotions, are divided into not altogether compatible regions of activity, and at the same time are single and self-identical. As the latter they are private selves, as the former they are those selves made manifest under varying conditions and circumstances. As the latter they have the privilege of dealing with and manipulating rights which no other being or agency can have; as the former they are centers of conflict. Body, mind, will, and the emotions get in one another's way. Their rights sometimes compete. At various times it is necessary and even wise that one or the other of them give way. Which one should? In what sense can they, in the light of such necessity and perhaps even wisdom, be said to deserve consideration from any power that there may be? Can we maintain that they are unalienable in any

sense? To this question at least seven answers might be given: (1) the rights are absolutely unalienable; (2) they are *prima facie* unalienable; (3) they are unalienable in principle; (4) they are generically unalienable; (5) they are only externally unalienable; (6) they are only internally unalienable; (7) they are collectively unalienable.

The first contention, that rights are absolutely unalienable, is most extreme in its position on the question as to whether or not men have unalienable rights; it departs in no way from the contention that men have rights that ought never to be abrogated, qualified, or limited. According to this view, even if the need to achieve the maximum attainable good forced a man or state to act so as to preclude the exercise of some right, the denial would be wrong. To be forced to deny a right is always regrettable and never justifiable.

This extreme view cannot be maintained. This becomes evident as soon as we distinguish between the possession and the exercise of a right. No specific right is always expressed. Nor can it be, for the occasions for its exercise constantly change. Thus, we can exercise no right of speech—a right, incidentally, which can be accredited to body, mind, will, or emotion—when in deep sleep; indeed there may never be a time when the conditions for the exercise of this right may be propitious, as for example, when the tongue is permanently injured. Nor is it always desirable to exercise a right; we ought not to exercise the right of speech in

the church or theater. If it be said that in these cases the right still remains, that it is not alienated in any sense, we will, in all consistency, have to say that rights are not violated when a power denies us the occasion, subjects us to circumstances where we cannot, or brings us into situations where we ought not to exercise whatever rights we have. But if we never can exercise a particular right, in what sense can we be said to have it at all? Would it then not be more accurate to say that we do not have the right, but that under such and such circumstances we could momentarily acquire it? It may be true that we would be allowed to speak once we had awakened, once the tongue had healed, or when we go out of the church or theater. But since we might be kept asleep, kept from having the tongue healed, prevented from leaving the church or theater, it would be more correct to say, not that we in fact had a right to speak, but rather that we had a "right" to be awake, to be healed, or to go outside. Only after one of these rights was successfully exercised would we be in a position to have a viable right to speak.

To all this it might be objected that the right to speak, though alienated in one of these ways, ought not to be alienated. But who would be willing to deny that we ought sometimes to sleep and ought sometimes not to speak in the church or theater? It makes sense to say the tongue ought not to be injured, but it does not make sense to say that when we are physically unable to speak we still have a right to speak. Only if it is

incumbent on a man or state to see to it that a native right be always exercised would it be true that it can never be made to vanish or be justly denied or qualified. The right to speak depends on other more general rights such as the right to use one's faculties, the right to health, and the right to movement. Perhaps the matter changes then when we turn from such a limited form of a native right, as that of speech, to a more general one? But such a more general form of a native right, for reasons similar to those which showed that the right to speech is not unalienable, is itself not unalienable. Like the right to speech, it is challenged every minute in the course of nature. Not only are there times when there is no occasion for the exercise of the right or when it cannot be exercised, but there are times when it ought not to be exercised. The most that one could urge is that some such right as perhaps the right to live, on which the rights of speech, health, movement, and others depend, is a right which ought never be denied.

Is the right to live a right which is, can be, or ought always to be exercised? Is it always wrong to limit or deny it? Does a social or political whole always do wrong when it denies to a man an occasion for, or when it limits or prevents the exercise of the right to live? I think not.

The right to live does conflict at times with other rights. It might, for example, be necessary or desirable

to make a man take the risk of losing his life for security's or liberty's sake. If justly sent forward on the battlefield by an officer who is reasonably sure he will not return, a soldier seems to have little more right to live than does a criminal civilly condemned to die. The reasons for the different condemnations are quite different; the evaluations of the two men by all are worlds apart. But the brute fact of the matter is that neither man has a genuine alternative, and that both of them are almost, through the act of a superior power, at the end of their life-spans. They will soon cease to be alive, cease to be men, cease to have the right to live as men. By placing them in circumstances where the right will most likely be denied exercise, we arrange to have the right become effete. Without seeming to deny the right, we see to it that the right is in fact denied. And this not without warrant.

It does not seem correct to say that no matter what the circumstance, no matter what other rights might be involved, it is always wrong to qualify, limit, or redefine the right to live, or any other such right on which such more familiar specific rights as speech depend. At most we can say only that it is a last-ditch right, to be given up only because it conflicts with another right which in that situation is better grounded or is more imperious.

Politics is the art of compromise whereby men are enabled to exercise the greatest number of rights in

harmony. The price that is paid for this art is that no one native right can be granted an absolute, unalienable status. No single native right is absolute, unalienable in every circumstance. There are times when each ought to be qualified, bounded, challenged, and in this sense, denied. Each has and ought to have only a limited scope and a limited application. Since the very prosperity of man may require the blocking of one or more of his rights here or there, we must, evidently, abandon this first blunt alternative, for a subtler, more flexible one.

## 2. RIGHTS ARE PRIMA FACIE UNALIENABLE

A man might be said to have some unalienable right at every moment, and yet not have a single right which was intrinsically unalienable. In each situation there might be some unalienable right, but the right might differ from case to case. Unalienability, in short, might be a constant, but the right which embodied it might be different at different times and in different places. There would then be an unalienability of rights in general, of the rights as a disjunctive set, but no absolute unalienability of any designatable right. *Prima facie*, on the surface, any right at all might appear to be unalienable; at second glance, after due consideration of the actual situation, only this right or that

would be seen to be unalienable, and only then and there.

This alternative tries to face up both to the fact of conflict of rights, and the need to maintain that man has unalienable rights. To do this it supposes that at some time or other every native right is provided with an opportunity to be satisfied. Such a supposition gives some warrant for the affirmation that every right is unalienable, for the right which is to the fore will, on the hypothesis, be satisfied. But since it also allows every right to be in the background in some situations, it also allows every right to be alienable. At every moment some right would be unalienable and the rest would be alienable. There would be no one right which always was unalienable. The view, in effect, holds that a man has only one unalienable right, the right to satisfy his specific native rights. But then it is a view which is indistinguishable from that given in the fourth or fifth alternatives below.

If one were always to deny to all rights, with one exception, the opportunity to have the preferred status of an unalienable right, the set of unalienable rights would consist only of that one excepted right. Since that right would be unalienable by virtue of an alterable decision, however, it would be alienable in principle though not in fact. The view thus involves the giving up the doctrine of *prima facie* unalienable rights and holding instead that all rights are in principle equally alienable.

It is possible to maintain, however, that man's native rights fall into an hierarchical order in each situation, apart from any decision. In each case, on this view, the right which circumstance favored would be unalienated, and the rest justly denied satisfaction. But it is conceivable that circumstances might always favor some one right. That one would be unalienated in fact forever, and (since circumstances alone are here the warranting factors) with justice. Such a right, however, could be said to be unalienable only in the sense that its alienability never was in question. It would be a *prima facie* unalienable right, but not because of any merit which it possessed.

The theory of *prima facie* unalienable rights has insufficient respect for the different native rights which a man possesses. It allows for the abandonment of any one right, and even for the rejection of all but one designatable right. According to it, it could be the case that a man might never, and ought never to, have a right to equality, or of speech, or from exploitation, because arbitrary decisions or the nature of circumstances had so far favored, let us say, the right to security. But these other rights ought not always to be denied. He who always decides against their exercise is wrong; if circumstances permanently preclude their expression there is something amiss with the world. To say this, though, is to move to the next alternative, for this takes more seriously the view that man has many specific rights, no one of which can be justly denied.

### 3. RIGHTS ARE UNALIENABLE IN PRINCIPLE

A man has a number of native rights. They are parts of his native endowment, answering to essential divisions and needs of body, mind, will, and emotions. In a good society or state—indeed this is one of the criteria of such a society or state—he will be able to exercise them all. But, as has already been observed, it is one thing to have a right and another to be privileged or justified in exercising it at a given time. Men have rights, but they do not have either the opportunity or the warrant to exercise them all, all the time. Children have not yet attained the status of those who can exercise certain rights, such as that of raising a family; criminals forfeit the privilege of exercising some of the rights that are theirs, such as the right of freedom of movement or speech. And all men are in positions occasionally which are analogous to these; all, at various times, are unable or unworthy to exercise some rights which are natively theirs. A man might have insufficient knowledge and thus might be in a position where he ought not to exercise his right; he might, for the sake of some more important return, be warranted in sacrificing its exercise for a while, or forever. Though he could be said to have rights which were intrinsically unalienable, the exercise of those rights might not be

wise at certain times. Rights, while unalienable in principle, would be alienable in practice and with justice.

The affirmation that a man might not be ready to exercise a right, or that he might give up the exercise of it, represents an advance over the first alternative with its denial that it is never desirable to deny some right. And the simple affirmation that a man has a number of unalienable rights represents an advance over the second alternative with its too ready affirmation that circumstance or decision suffice to make a right justly give way to some other. But since it allows every specific right to be justifiably denied expression, it does little more than make man the locus of possible rights, if actual rights are to be understood (as they should be) to involve exercise.

Let it be granted that men have the right to exercise some right or other at every moment. Such a right of exercise will be quite different from the specific rights which are exercised. It will be a right which characterizes him as a single being. Instead of standing in contrast with other rights of man it will serve as the avenue through which some one native right at a given time necessarily finds expression. But since no man has the unalienable right to express whatever right he wishes, where and when he wishes, the right to express his native rights can be unalienable only in the sense that it is always wrong to deny some expression to some one of these native rights. He would have a right which was

unalienable in general, as applicable to some right or other, but which was not unalienable as made germane to this or that right here and now. But, to say this is tantamount to accepting a special form of the fourth of our alternatives.

#### 4. RIGHTS ARE GENERICALLY UNALIENABLE

It is conceivable that a man might have a single, generic, unalienable right, but no specific unalienable ones. He might, say, have a generic right to exercise a right favored by circumstance, as was suggested above. Or he might have a generic right to live, or perhaps to possess some specific unalienable right or other at each moment.

On this view, it would be up to others to determine what specific rights a man might justly exercise at such and such a time and in such and such circumstances. To know just which rights a man should exercise at any given time, one would have to attend to the needs or demands of society, state, or fellow-man. These might conceivably support his generic right in the very act of specifying just what form it should assume. His specifications of the generic right might conflict with specifications made by others. If they opposed his specifications in order that maximum good might come about, they would, without in any way affecting his

generic right, justifiably reject the specific forms which he might make it assume. Their rejection might be arbitrary or selfish. They could conceivably require him to exhibit his generic right in specific ways which were contrary to his own desire, and perhaps not for his own good. They could conceivably allow the generic right only one mode of expression, in the guise of one particular right which might not be the right that a man wished or ought then to exercise.

On this hypothesis a state, a society, or a fellow-man would be granted the privilege of dictating just what specific shape an individual's generic right should assume. This privilege is too much to grant. The specifications imposed by others might work to the detriment of the individual. There are specifications which the individual should himself be allowed to provide in order that justice be done to the nature and needs of his mind, body, will, and emotions. Each of these has a right which a just state or good society must respect. But to say this is to say that a man has specific rights which cannot be justly alienated by state or society. This is our fifth alternative.

##### 5. RIGHTS ARE ONLY EXTERNALLY UNALIENABLE

A man has specific unalienable rights which no society or state could justly delimit or proscribe. But the man

himself might conceivably find it eminently desirable to give them up, for his own sake or for the sake of others. The rights would then be internally but not externally alienable. Some such view as this is at the heart of the social contract theories of the state. These start with the supposition that all men, in a natural mode of existence, have a number of specific, unalienable rights which no society or state has a right to deny. But men, in their natural existence, are thought to insist on their rights in such a way as to bring themselves inevitably into conflict with one another, jeopardizing their lives and security, and precluding the growth of civilization and the achievement of justice. In order to preserve some one right, such as the right to live, or in order to preserve the largest number of rights, men, according to this theory, transfer some of their rights to the whole of which they are members, or to a power standing outside them all. They thus themselves alienate some of their rights, thereby making possible a public world in which each will find a satisfaction otherwise not possible.

If we avoid supposing that there was an actual contract which men once made with one another, or with some sovereign, and allow that the "contract" might justly be canceled at some later date for pre-assignable reasons, the theory will turn out to have considerable power. It allows for the claim that men have unalienable rights; it affirms that they have rights apart from society or the state. And it makes allowance for the

need of men to restrain themselves and others for the sake of a common good. Unfortunately it puts no obstacle in the way of a man's denial of his own rights. It allows men to abandon some of their rights completely, even to sell themselves into slavery. It allows them to sacrifice some one or more of their rights in order to guarantee the satisfaction of some other rights which may be intrinsically inferior to the others in value or import. This is too great a concession.

To say that human rights are only externally unalienable is to allow that men may rightly alienate any right whatsoever. Unless we affirm that there are rights which a man ought not to alienate, we must grant that he can alienate some major right for the sake of retaining some minor one. We would have to grant that he could rightly alienate any right he wished, that it would be possible for him to retain rights which keep him in conflict with others, or which at least make the functioning of the state or society difficult, where not impossible. A "social contract" in which he and others abandoned rights in order to produce some corporate whole would then be a contract for mutual defeat or destruction, or for the attainment of a common life which was far from ideal. The social contract theorists did not entertain this consequence because they supposed that men in a state of nature were incredibly wise and judicious bargainers who never gave up anything except for definite and large gains. Their social contracts were masterpieces of strategy, in which men

exchanged this or that right for a likely or guaranteed satisfaction of the rest, sometimes even obtaining additional rights from the system they helped to bring about.

If all we can say is that rights are externally unalienable, we leave open the possibility that they might be internally alienable, that men might justly alienate any right they wish, no matter what harm such alienation might do either to themselves or to others or to the whole they constitute. And if rights may be justly alienated by men from within, they cannot be said to be alienable only externally. But if we affirm that there are rights which even the men themselves ought not to alienate, we move to the considerations raised in the next alternative.

## 6. RIGHTS ARE ONLY INTERNALLY UNALIENABLE

Any alienation of a right which injures oneself or others, inside or outside society and state, is unjust. A man ought to retain those native rights whose abandonment would jeopardize himself, his fellows, and the operation or purpose of the whole of which he is a part. If then there are native rights which a man has, whose denial jeopardizes or denies the rights belonging to society or state, he cannot be granted the privilege of alienating them, when and as he wishes.

If there are rights which are internally unalienable, there is justification in an insistence that men express their rights. A society or state might justly suppose that it has the task of seeing that a man keeps and exercises certain rights, particularly if only in this way it can maintain its own rights or do the work for which it is designed. It can with considerable justice insist that a man exercise the right to live, and punish all attempts at suicide. It might with perhaps equal justice insist that he exercise the right to use his mind, to inquire, to know, to communicate; and it might compel him to be educated as a way of promoting such exercise. It might demand, by punishing all avoidance with fines and prison, that he exercise a right to have a family or a right to vote.

But if we affirm that a society or a state may dictate which rights a man must exercise we must also grant that it can dictate which rights he must not exercise. It could then conceivably deny to him this or that right, and might conceivably allow him only those rights which destroy it or him. If rights are unalienable only from within, every one of them can be alienated with justice from without.

So far as a plurality of rights is concerned, it seems evident that we must somehow combine this and the previous alternative. Men alone are allowed to alienate their native rights; the society or state is alone privileged to determine how the rights are to be satisfied. This means that every native right is internally alien-

able. But it does not follow from this that every right whatsoever is internally alienable, for the act of denying native rights occurs only within the context of an affirmation of an all-inclusive, unalienable right.

## 7. RIGHTS ARE COLLECTIVELY UNALIENABLE

Native rights are claims made on behalf of whatever essential powers a man has. They are not so related to one another nor so well-defined initially that their exercise will necessarily bring about the greatest good. But then since a man has no rights to the production of evil, his native rights need determination as to scope, occasion, interrelation, before they are to be permitted exercise. Taken severally, each is an absolute which ought not to be denied; taken together, in the organic unity which is man, each is qualified by the others.

The parts of a man, the different facets and divisions of him to which the several rights answer, do not exist by themselves. Each is part of an organic, unique unity. That unity has a right of its own, within which each of the specific rights has a subordinate place and value. A man can insist on the unity, and the right which characterizes it, in such a way as to stress this subordinate right or that; it is conceivable even that he might justly insist on the right of that unity in such a way as to require the neglect or at least the serious

qualification and limitation of the subordinate rights. In either case he will not do justice to himself if his insistence on the unitary right involves the denial of all his subordinate rights at the same time, or the indefinite postponement of the satisfaction of any one of them.

It is up to a man to unite his various specific rights. He must deny them independence and therefore full satisfaction then and there, so as to be able to give them interdependent roles within the single unitary right, and a satisfaction eventually. To avoid denying them outright, to avoid denying all distinctness or claim on the part of his mind, body, will, or emotions, he must continue to hold on to each of them. In this way he will escape really denying any of them. By bringing them together, he will merely modify them, precluding a present full satisfaction of each in order to achieve an eventual maximum satisfaction of them all in the course of a satisfaction of himself as a unitary being.

Native rights are so many different claims made on behalf of essential parts of a man. The claims are met just so far as these several parts are enabled to function at their best. The rights in a sense are rights to benefit from public existence, since to benefit from public existence is to acquire opportunities, instruments, and satisfactions for those rights. But the rights are not themselves directed toward, they do not themselves demand that there be something gained from public existence. Such a demand is made by man's unitary nature when this is enriched by an inclusion of the

specific rights. The right of that enriched unity is, as is that unity itself, at once unalienable and non-native. Each man has the privilege of redefining his native rights, of using them so as to constitute such an unalienable unitary enriched right. In one sense he exercises that privilege only once in his life. In another sense he exercises that privilege all the time. The outcome in either case is an unalienable right to benefit from public existence. It is in the light of that right that he re-assesses and provides for, alienates and yet satisfies, his native rights.

The unalienable right which a man forges by inter-relating his native rights in a single unity is directed at the world beyond. It demands that something be there provided to warrant the alienation of his native rights. These were alienated only in order to be better satisfied in a public world. The warrant for giving up a native right then lies in the fact that it makes possible a new right which more than compensates for it. A man must get to a position where he enjoys, exercises this new right. And the satisfaction of this right must provide a satisfaction of the native rights, for their eventual satisfaction offers the only justification for their alienation.

A man's alienation of his native rights is not a way of abandoning them. It is rather a mode of giving up a diffused or pluralized perspective for a more unified one. Alienation of native rights is actually a dis-alienation of oneself, a proper recovery of one's proper being with a private self and bodily abilities, organs, and ap-

petites. One could in fact not literally give up native rights, without losing body, mind, will, and emotions, for the rights are integral to these. Their alienation is but the abandonment of a perspective not altogether appropriate to public life.

The answer here given to the vexatious problem of unalienable rights in a way encompasses those offered in the previous six alternatives. It agrees that native rights are absolutely unalienable, but only as constituent elements in a single constructed unalienable right; it agrees that any one right might be limited, but only so that all of them together can be affirmed; it agrees that they are all *prima facie* unalienable, but takes this to mean that they must have some satisfaction in the final solution; it agrees that they are possessions which cannot be torn from man, but affirms that he can alienate them himself; it agrees that there can be a generically unalienable right, but insists that this must make provision for particular rights; it agrees that rights are externally unalienable as parts of a single publicly unalienable right; and it agrees, finally, that rights are internally unalienable as deserving of a satisfaction within the unity they help constitute.

The unalienable single right to benefit from public existence is manifest as the publicly supported claim of a man to exercise his body, mind, will, or emotions in relation to other similarly expressive men. In effect this gives a public meaning to the basic native rights out of which he forged his single right. It reinstates

those rights as internally supplemented by one another and as externally matched by the claims of the bodies, minds, wills, or emotions of others.

In the context of one's single unalienable right, the basic native right to the use of one's body is made manifest as a public right to movement, health, and security. The mind's native right to truth is made manifest as the public right to education, with its accompanying right to speech and inquiry. The will's basic native right to insist on itself is made manifest in the public right to pledge oneself, and thus in the right to property and worship. The native right of the emotions to express a personality becomes manifest as the public human right to be a distinctive, self-determining public person. We move to a humanly sensitive politics when we deal with the state and its laws in the light of the existence of these public rights, and the native rights whose nature they partly reflect and out of which (through the mediation of the unalienable right to benefit from social existence) they issued.

## 4. *The Law of the State*

### 1. ARISTOTLE'S VIEW

OF THE THREE great philosophical political theorists in the Western world—Aristotle, Hobbes, and Hegel—the first was undoubtedly the greatest. He dealt with the topic from more points of view, was more humanistically minded, and was more sensitive to the nature of man and his needs than were the other two. His account has defects—serious ones, I think. Still he avoided the extremes of the other two, and the errors which make their accounts so implausible.

Hobbes brilliantly exposed the central nerve of the state's sovereignty. But since he thought of sovereign power as absolute, he tended to overlook the rights and dignity, the reserves and privileges which men possess apart from and regardless of the claims of the state. More of a dialectician than Hobbes, and therefore more aware than he of the justifications and implications of

the state, Hegel tended to push his theories even beyond the borders where any men or facts were germane. He thought of the state as the inevitable outcome of a progressive dialectical history, and seemed often to ignore the fact that it comes to be through the interplay of many contingent factors produced by nature and man.

Aristotle's state, at once religious, ethical, economic, social, and educative in purpose, was quite distinct in size, nature, and even function from the states to be found in modern times. Ernest Barker, a most sensitive expert on Aristotle's political theory, remarks that "the assumption of Aristotle, as of Greek thought generally down to the days of Zeno and the Stoic doctrine of the cosmopolis, is that of the small state or civil republic whose citizens know one another personally, and which can be addressed by a single herald and persuaded by a single orator. . . . It is a small and intimate society; it is a church as well as a state; it makes no distinction between the province of the state and that of a society."

In contrast with Hobbes, Aristotle held that the state had realizable aims which were superior to the realizable aims of individuals or limited collections of them. The state, he thought, was the most comprehensive and best of institutions, existing for the sake of a good not otherwise attainable. Its primary function was to make possible the full realization of its members, offering a satisfaction of human needs no other agency

could provide. It had an objective, he rightly saw, distinct from, more inclusive than, and essential to the most adequate fulfillment of man's needs. In contrast with Hegel, Aristotle refused to say that it came about necessarily. Natural and desirable, it was still for him a contingent occurrence. The state ought to be and the state is; but it need not have been, nor are the forms which it assumes in the course of time the best possible forms, the forms which it ought to have.

Though Aristotle's writings in politics have a solidity, a stability, and a wisdom rarely equaled in literature, his account of the state makes a number of questionable assumptions. The following seem to be the most important:

(a) Aristotle envisaged a state which was limited to only a small body of similarly oriented men. What he says cannot be readily applied to the mammoth, complex states we have today. If we did apply his account of the city-state to our much larger states we would violate his own insight that larger organizations differ from smaller ones in more than size. Our states are differently organized; and they must be differently organized in part because they encompass a larger range of tasks and problems than any city-state could ever face.

(b) For Aristotle, only some humans could be genuine constituent members of a state. He held that differences in sex, intelligence, and maturity express basic and even desirable differences. Men and women, master

and slave, father and son, he thought, pursue a common interest in complementary but hierarchically ordered ways. He thought that men differed from women as ruler and ruled; that a difference in native gifts of intelligence was basic enough to warrant a difference in the right of freedom to be allowed, and thus justified a kind of slavery; and that father and son differed in nature and not merely in capacity. For him, those who are possessed of reason naturally become and ought to become the masters rather than the representatives of those who lack it; they complete the others not by working on their behalf but by conceiving of plans which it would be wise for those others, because they are beings of an inferior order, to accept.

Aristotle's history is largely myth. Nor is there much to be said for his view that men are natively superior to women, politically and socially. It would be hard to justify his theory of slavery and his assignment of quite different rights to father and son. Indeed these views go counter to his own theory that all humans have the same common inexpugnable essence, and therefore presumably the same set of native rights. On his own view of biology and psychology, all men are essentially rational animals, so that it makes no sense to speak of some as naturally slaves. Children, wicked men, and madmen might be excluded from the class of rational animals, but if they are men, it must be as beings who can be, may be, ought to be, and in principle already are members of it.

If females are not fully human there is no sense in saying that they have the same essence as males. If they too, like the males, are rational animals, they too must have the same native rights that the males have, for these rights follow from human nature. Men and women differ in stress, strength, and energy; they do not differ in kind. Differences in intelligence make for a difference in task and role, but do not entail a denial of freedom to the inferior; they do not justify slavery. Father and son differ in development and responsibility, but not in native right. We today can make better use of multiple talents and capacities, and thus can be more ready than Aristotle to see that what he took to be fixed hierarchical differences are in fact diversities promoting a common good in coordinate ways.

(c) Aristotle saw, as Plato did not, that the family is a desirable association. But then he went on to suppose that the state was built up of a combination of families. He thereby missed one of Plato's brilliant insights. A combination of families gets one no further than a mosaic, a village or perhaps a tribe. It lacks the positive law which is essential to the being of a state. Plato recognized that a state originates only after social classes and the nature of the Good achieve distinctness. The transition from an account such as Aristotle's, which recognizes the importance of families, to one such as Plato's, which recognizes that the state is not built out of them or combinations of them, is pro-

vided by the fact that families have political roles, and that their members together can make up a public in which men function as citizens, even in opposition to family demands.

(d) Aristotle supposed both that the family is temporally prior to the state and that it is an analytic component of it. Neither supposition is justified. In any case they are incompatible. What is temporally prior can be replaced, give way to something other than it; what is an analytic component is partly constituted by the state and could not exist prior to it.

(e) Aristotle supposed that men do and ought to live in families. But men can and do live celibate lives. They need early nurture, of course, and they gain something by being brought up in the close life of a family, but these conveniences do not go the length of making the family always necessary or desirable for every man. The family perfects a man somewhat; but it depletes and limits him too. The benefits it provides need balancing by benefits to be obtained in other ways.

(f) Aristotle supposed that the family, though essential, could never provide all that was essential for a full life. That is why he thought it necessary for the state to arise. Only in a state, thought he, can a man be complete. Yet it is conceivable that a family might be large enough, flexible enough, well organized enough to enable a man to have all the goods that Aristotle refers to as achieved only in a state. One can, in a large family, conceivably live a just and good life and

so far make the Aristotelian state unnecessary. Aristotle kept the family small and its functions limited; but there is no need in theory or fact for one to remain within these limitations.

Aristotle thought of the state as completing the kind of work that was done by the family or by combinations of families. He ignored the fact that a family could function on behalf of the state. It educates and builds morale, it stabilizes activities and solidifies morality; it refreshes and reorganizes the men whom the state partly controls and who ought to work for it. The family intensifies values and meanings which the state, by virtue of its impersonality and size, cannot sustain except in a minimal way.

(g) Aristotle's state floated as it were on a body of workers and tools. Small though it was, it did not encompass all the men who lived within its confines and who contributed to its well-being. He thought that the only genuine members of a state were those who would actually assume an office in it. Yet ruling is but one of many essential political activities. To insist on this alone is to confound state with government.

The ordinary man contributes to the state's being and excellence as surely, though not necessarily as evidently or directly (and perhaps not as extensively) as the ruler or the lawmaker. To obey the law, to live in consonance with the law, to make it possible for the state to continue and to flourish by doing one's work is also a way of being a real member of the state. A

minor dignity or worth is not to be equated with no dignity or worth; work with hands is not necessarily inferior to work with mind.

(h) Aristotle supposes that the village is analytically and temporally intermediate between family and state. Whether the village be treated as a kind of society or not, it is not the case that it need be subsequent in time to the family. And if the village is under the control of the state it is a state-controlled village and cannot exist apart from and therefore prior to the state. Many other organizations could mediate between the stage where men are in families and the stage where they are together in a state. A village moreover is not made up of families unless the term "family" be recognized to be coextensive with homes in which individuals are sustained by and interlocked with property, customs, traditions, and responsibilities. The members of a family, strictly speaking, are private beings together; the men in a village, in contrast, are public units in a public world.

(i) Aristotle was much concerned with the manner in which sovereignty could be assumed, and by whom. Though he saw, as Hobbes did not, that the sovereign was inside the state, and not over or identical with it, he did not make evident how a part of the state could function on behalf of the whole, and thus how it was possible for there to be a sovereign in the state. Aristotle had a rather low opinion of dialectic; as a consequence he overlooked again and again the need

to answer certain hard questions. And one such question is how a state can be ruled by a part of itself. The answer—through representatives, i.e., individuals who act out the pattern of the whole, for the benefit of all—Aristotle would not reject, but it is also one he did not face and explore.

(j) Aristotle's men were essentially public beings. He did not raise the question of whether or not their native rights could be alienated, how the state could satisfy those rights, whether it was able to or should add to those rights, and just how one resolved a conflict between the claims of the state and the claims of men.

(k) The aims of a state are far from including all the objectives appropriate to man. But Aristotle spoke as if the end which is attained in and through a state is one which contains within it, as parts, all the objectives appropriate to individual men. Yet the religious and ethical lives of men cannot be entirely caught within a political frame, since they often conflict with it. The state does not have and need not have an all-inclusive aim in order to be more inclusive than any man, and indispensable to all.

Instead of, with Aristotle, dealing with the state as a completion or supplement of society and family, it is better to deal with it as on the one hand articulating, extending, and enforcing the demands natural to a society, and on the other hand, as pointing to norms and values outside itself. The first of these considerations

involves the acknowledgment of positive law; the second, of natural and civilized law.

## 2. POSITIVE LAW

For their own good, men should sometimes be controlled, and even forced to act in various ways. Standing opposed to possible defections that might occur to any man, there should be limits put on their behavior. If this could be accomplished by habituating them, there would be no need for positive law. But men are to be restrained, censored, and compelled even before they have been able to acquire proper habits. They must be made to behave in certain ways even in the face of a persistent refusal to heed. Slaves must be forced to be free, even though they are content with their lot; children must be educated, even though they and their parents prefer to keep the children in ignorance and at work. Competition must be kept within bounds, business regulated, roads built, health ordinances enforced, welfare promoted even in the face of the opposition of those it is designed to benefit.

This is a dangerous contention, not because of what it urges but because of the manner in which it might be supported in fact. To arouse the opposition of men is to risk being frustrated, producing more harm than good. All attempts at the imposition of good from above, moreover, run the risk of perpetuating estab-

lished abuses, of confounding what those in authority would like with what ought to be. And even where well conceived and well promoted, it may serve to reduce the amount of struggle required below that minimum which men need if they are to function at their most alert and imaginative best. These facts should not, however, blind us to the truth so well underscored by T. H. Green, that there are some things so important to have done that men should be required to do them, no matter what their character or virtue, no matter what their motive or reason be for refusing. We want men to stop at a red light, and do not much care whether they stop because they are afraid to be fined, because they are anxious to do their duty, or because they believe this is a way in which good may be brought about. In this particular case, in fact, where it is imperative that men respond quickly and correctly, it would be preferable to have them stop at a red light automatically, without reflection. We would rather they stopped as intimidated or as amoral men rather than as willing, responsible moral ones, if this meant that they would stop sooner and better. We want the ideal of rapid obedience to traffic signals achieved regardless of what men privately want; to attain our desired result we make it uncomfortable for men should they fail. It is hoped that what is required will eventually become integral parts of the social law. Until then it is the topic only of positive law—laws forged by such

legislating bodies as legislatures, judges, arbitration boards, etc.

Depending on social law, trying to epitomize and articulate it, positive law also goes beyond it. The two kinds of law may in the end not cohere; what one says may have no bearing on what the other expresses, particularly when positive laws are made by men alert to the nature of justice, right, and virtue, and social law is allowed to be just a tissue of convention, tradition, and unreflecting habit. Ideally, though, positive law guides as well as follows social law, and social law in turn sustains, corrects, mutes, and transforms positive law. Only a perfect circle of the two will do justice to man's natural dispositions and traditionalized habits as well as to the need to govern, control, and overcome him, for his own good.

Men are not and cannot be virtuous always, nor virtuous at a constant pitch. The rhythms of daily existence, the variability of understanding, insight and experience, fatigue and interest, the perpetual recurrence of selfish appetites, preclude a constancy of effort on behalf of what, in the abstract, might be known as right.

It is not correct, then, as is sometimes supposed by men of good will or by sociologists and historians, to hold that there is no need for positive law, for a law which articulates, urges, and sustains the principles that ought to govern the public activities of all. It is

not true that all that is needed if good is to be done is to educate men, to turn them into beings of good intent, to inculcate a religion, or to have them all subscribe to some social or national truth. There must be an insistence on the achievement of a certain minimal good in the face of man's indifference, reluctance, or incapacity. This means that the realization of the good must not be jeopardized by the ineffectiveness, unwillingness, good intent, or indifference of men. Sanctions, punishments, fear must be invoked to make men into effective instruments for the good; money, techniques, and knowledge must be placed at the service of the public to see to it that the good which should be realized is realized in fact. An adequate grasp of that good has bearing on domains outside the confines of society and state. But before one comes to see this, one can live quite well in a world governed by effective, well-wrought positive laws.

Whatever good has been attained in a society should be protected by authoritative, reasonable legislation, backed by force. Laws help men to act properly over stretches of time. They also help protect goods already achieved. Hardly anyone in this country wants to go back to the primitive practices of slavery or to child labor. It is not only that these have been found to be unwise and inefficient; it is not only that most men see there is something wrong in these practices. They are now excluded by the very values and meaning which are central to our community. To bring them

back is to change our ideology and morality. The formulating of positive laws which exclude these practices is a way of preventing that return, remote though the prospect now seems to be. There ought, as Felix Cohen often urged, to be more, not fewer, laws. The more explicit, the more complete, the more comprehensive the legal demands be, particularly in the area of vital existence, the more readily does one know the limits which no one can cross with impunity.

A positive law is a stated rule involving a promised punishment, serving to keep the behavior of men within definite channels. It is an agency, an instrument which enables us to determine where public force will be employed should we engage in or refrain from various acts. When properly meshed with social law it at once expresses the expectations of men as to where the social good lies, and dictates what should be done or avoided if the public welfare of all is to be promoted.

In effect a positive law says that if  $w$  is the cause of the loss of a value  $x$ ,  $w$  is to be subjected to condition  $y$ . This condition can be reasonably expected to prompt  $w$ , and perhaps other beings,  $w'$ ,  $w''$ , to promote the achievement of the good,  $z$ . For the purpose of the law,  $w$ ,  $w'$ ,  $w''$  are beings who, from the point of view of a reasonable man, caused value  $x$ , a social good, to be lost. In that community,  $y$  is an undesired circumstance, usually a punishment which the common sense of that group normally expects will further the attainment of the desired public good,  $z$ . The law tells

*w* that punishment will be imposed in such a way as to redirect him to *z*, public welfare as the society views it. Because different communities have different ideas of what is a loss in value, of causation, of what is undesired punishment, and what the public good is and how it is to be attained, positive laws do and ought to differ from community to community.

In modern times positive law serves primarily to tell a man that if he produces a loss of value, it will subject him to a punishment in the form of fines and restraints so great as to make it desirable for him either to do what was expected of him or to bring about a good at least equivalent to it. It will try to make him either fulfill a legally acceptable contract or at least produce the equivalent of that which the fulfillment of the contract was designed to bring about. Precisely because it is the function of the law to help bring the good about and never what is evil, it will not and ought not to support contracts, even if valid in form, to engage in prostitution, to form a robber band, to sell one's liberty, and so on.

Contracts, as a matter of fact, illustrate one of the two main divisions that have usually been made in positive law. Contractual law is concerned with voluntarily assumed obligations between members of a legal community who look to the law to adjudicate their differences; noncontractual law, in contrast, is concerned with individuals in relation to duties which flow from their natures, roles, or privileges. The latter

divides into criminal and noncriminal laws, the former relating to those activities which are offenses against the whole, even where directed at a part. Thus, though theft is usually an act performed against another man, it is a crime against the whole, and he who is injured, even if he wished, is not permitted to legally ignore or cancel the outrage. From the standpoint of the criminal law he who is injured is but an occasion or avenue through which the whole is hurt.

A violation of a contract of course could be made a crime, and a theft could be conceived to be of no concern to the whole. Still a distinction between the two types of positive law should always be made. One important way of doing this is in terms of positions and outcomes. If such and such be the positions of men, says positive law, such and such must take place. Noncontractual law defines demanded outcomes in terms of actual positions; contractual law defines new positions in terms of expected outcomes. As Justice Holmes said, "tort [i.e., a civil noncontractual offense] means you are liable to pay; contract means you must pay unless the promised event occurs." If you have put yourself in the position where you have injured another, noncontractual law tells you what you must do or avoid, if you are not to be subject to more disagreeable demands; if you have contracted with another that such and such is to ensue, either through your own efforts or another's (not necessarily human), you also agree, should the expectation prove unjusti-

fied, to subject yourself to various conditions as compensation for the other's reliance on your characterization of the future.

An ideal positive law, whether contractual or not, has at least seven characteristics: It is (a) anonymous, (b) impartial, (c) prescriptive, (d) objective; (e) it relates to public behavior; (f) it defines a set of civil rights answering to man's native rights; and (g) it matches civil rights with enforceable duties.

(a) Usually the positive law expresses the will of a dominant or representative prestigious class. Such a class ought to avoid both the fact and the appearance of expressing only its own interests—an appearance which is possible even when it is devoted to the promotion of the welfare of the rest. This it can accomplish through the use of an official language, the language of nobody, an anonymous language, used by no one but officials, faceless men who supposedly stand outside all classes. These faceless representatives generate a set of anonymous rules and commands, translating the activities which occur inside each class, including their own, into analogues of what is to be done inside the others, enabling each thereby to be geared to the rest.

(b) Positive law gives the structure for one large community ceremonial in which all participate. Offering a kind of network of possible positions and tasks, it ought to express them impartially. The different types of work and the different roles which the community

requires for its health and continuance should be assigned without regard to special privilege, with an eye to merit and capacity, without favoring any particular men or classes, except so far as they happen to instance a virtue or power which a given work or role requires. To bring this about it is most desirable to forge a technical vocabulary and make a technical use of it.

The common objection of laymen to the language of the law is on the whole without warrant. What they term "jargon" is usually a set of terms having technical values; what they term "prolixity" and "undue complexity" are qualifications needed for precision. No one questions the need and right of exact scientists to create technical terms which can be understood and used by all the members in the profession; no one questions their right or need to express themselves in the rarefied, impartial, but complex language of mathematics so as to characterize the objective natures, activities, and consequences of the items on which the science has focused.

The more impartial a law, the more will its language tend to be technical, answering to the usages of no one particular fragment. It is, to be sure, desirable that the limited roles which the law assigns and the tasks it demands should be understood by those to whom it applies. The technical impartial language should be supplemented by interpretations of the meaning it is to have in limited contexts. Since the law deals with these limited contexts not in terms of the particular

individuals who might happen to occupy them at some time, but in terms of any individuals who might or ought to occupy them, it must refer even to those limited contexts in impartial terms. It should always impartially refer to the beings who are to engage in this or that work, ignoring their individualities, their flavors, temperaments, or whatever features they have which are not relevant to that particular context, role, and work.

(c) The use of the term "positive" has led many to overlook the prescriptive character of the law. Not only does positive law demand the performance or avoidance of acts on behalf of the state, but it does so also on behalf of a justice which that state may not entirely acknowledge. The law is at its best when men are controlled through its agency for the purpose of enabling them to reach a state of affairs where they will be effective in harmony. It prescribes a standard of behavior, usually reflecting the values cherished by an empowered class. Its prescriptions are expressed in the form of threatened penalties. Despite the fact that there are cases where no express penalty is imposed, there is always one involved. It is at present, for example, a misdemeanor to harbor an alien not duly admitted or lawfully entitled to enter or to reside in the United States. Because there is no express penalty imposed for the offense, it has sometimes been said that there is here a case of a "sanction of nullity," a lack of penalty. But this is to overlook the fact that the

penalty for this misdemeanor is such an unstated special, but enforced, penalty as that, e.g., of denying the protection of the law to a landlord who harbors the alien.

The prescriptiveness of positive law is threefold. It urges actions and avoidances in the light of the established social law; if it did not it would always be in conflict with what people habitually do. It expresses demands of the state, sometimes in opposition to its members; if it did not there would be no organized public whole of men with needs and demands which men must fulfill. And it is the surface of a further law beyond, a Natural Law, in terms of which its justice and worth are to be evaluated; if it were not, there would be no way of knowing what positive laws ought to be enacted.

(d) Even if an anonymously forged positive law did not express the prejudices of some class, it might be made to apply only to a part of the political whole to which it should be pertinent. If it were also impartial, dictating positions and tasks without regard for particular interests, it might still not allow some men or kinds of men to come under its aegis. Its prescriptions might express only the demands which one class imposes on others.

Laws should be objective, even to those who forge, defend, insist on, and interpret them. The right to make laws does not destroy an obligation to obey them, and this is particularly true of those laws which attempt

to answer to the native rights all men have. There should be positive laws which are applicable to all in the state; the very beings and agencies which forge the laws of the state, no less than others, ought to be subject to them. Those who expressly make or enforce positive laws should recognize that these apply to themselves as well as to others. And since all law must be backed by force, compelling obedience, even those who forge the laws must be subject to powers which can make them, no less than others, submit to what has been decreed.

(e) The positive law abstracts from the fact that men differ in private virtue and vice, in personality, in degree of private guilt. It is more than anonymous, impartial, prescriptive, and objective—since these could conceivably relate to some privately cherished aspect of a man, such as his religious belief. Administered anonymously, ideal positive law looks at all men as though they had no souls. This does not mean that it is indifferent to their feelings and their personalities, but only that it deals with them as though they were just public units. Even its references to malice and intent are but ways of speaking of them as having made public preparations for public acts. Indeed, this characteristic of the law is almost a tautologous consequence of the fact that the law is concerned with public units, and not with beings having an unmanifested interiority or privacy. The point has sometimes been overlooked

because the law has to answer, sooner or later, to man's conscience.

It seems wrong to make the law concern itself with what people have incidentally or accidentally done instead of to what they really are and intend. Still there is no way in which one can know what men are and intend except by noting what they publicly do. An intention not manifest in public preparations to act or a malice not overtly expressed may be known to poets, philosophers, saints, and God; they are not known to legal men. These must judge in the light of empirical evidence which is, in principle, available to all. On the basis of what is publicly learned one might with warrant infer to what men in fact privately intended. But this inference, though legitimate, occurs after and apart from the obtaining of whatever knowledge is relevant to legal judgment. Starting with and building on what the law in principle is prepared to acknowledge, the outcome of the inference does not qualify or alter legal decisions.

(f) Positive laws in effect define man's civil rights. These are the rights which the state recognizes him to have. In the endeavor to give some guidance to the legislature and judges, the state may explicitly lay down in a constitution just what those rights are. But whether it does this or not, the state, through the agency of its positive laws, affirms which rights it does respect. The totality of those rights, constitutionally and positively

expressed, should answer to man's unalienable right to benefit from public existence. It does answer of course to what that unalienable right means in that particular state. A state's justice can in fact be measured by the degree of consonance that exists between what the totality of civil rights means in that state and what it ought to mean, in the light of man's native rights and the unitary right he makes them constitute.

The civil rights of man should divide into four sets, matching the divisions characteristic of the four types of native right. Only if they do so divide can the totality of them promise to satisfy man's unalienable right to benefit from public existence, for this requires that all man's essential parts and functions be satisfied. There should then be one set of civil rights (and therefore positive laws) having to do with knowledge, another with property, a third with production, and a fourth with personality. Each of these sets should have within it a plurality of specific laws designed to take care of the different ranges, references, and situations which rights have in various important, repeatable contexts.

(g) A civil right which no one was required to allow for, to sustain, or to satisfy would be inane, a hope rather than a significant claim. A genuine civil right which no man was required to allow for, to sustain, or to satisfy would be one which made claims not against fellow-men but only against the political whole. Most genuine rights, though, are rights which demand

the performance or avoidance of various acts by fellow-men. The state, when it forges its positive laws expressing civil rights, at the same time in effect thus also defines civil duties.

The civil duties which the law prescribes may be neglected. So far as the state permits the neglect it in effect permits the denial of the very civil rights it intended to acknowledge. Only if men are made to allow for, to sustain, or to satisfy civil rights will these be rights in fact. But men can be made to take account of whatever civil rights there be only if pressure is exerted on them. They must be coerced by an actual or threatened force. That force should be just enough to satisfy the need to have the law obeyed. For the most part it can be allowed to remain latent, to be unused but available. But this does not affect the fact that the law is law only because and so far as it is backed by force. Without this it would not govern, control, regulate; it would not be law in fact.

These seven features of an ideal positive law help the state to realize its highest objective: public welfare, which is to be reached from the position of what is comparatively unsatisfactory today through the instrumentality of available public forces. That objective is less than the total good, since it provides for only a relative improvement of what the community takes to be wrong. But no matter how modest it be it requires the backing of a sovereign power.

## 5. *Sovereignty*

### 1. THEORIES OF SOVEREIGNTY

A STATE IS A society which supplements an unarticulated social law by a forceful authority expressing its intent in positive laws. The state governs the men in the society through the agency of these positive laws. They are its decrees enunciated, interpreted, and applied by effective representatives. More than an association in a common territory, more than an instrument for preventing injustice or for making an easier exchange of goods, the state is thereby enabled to sustain individual life, include a social life, direct men to the good life, and contribute to a complete life.

The state is neither self-sufficient nor all-encompassing. There are higher and more inclusive goods than those which it exhibits. The arts, the sciences, speculation, absolute ethics, and transcendental religion are outside its scope, even though it can and does regulate

their local expressions. Its primary task is to help men achieve some of the things they want, but for which they are not individually or socially prepared, and for which they have not the proper instruments or guidance. Its laws and its institutional forms canalize activities in new ways, offering men a basis for new activities, a rational formulation of the meaning of their wants, and established vehicles for deciding what is good to do in public.

Since the state has its own objectives, it makes demands on the men that constitute it, forcing them to do and avoid various things, not necessarily within their purview or to their interest. Some of the things it demands may be good for men to do but the men may not know it or otherwise work for it. Some of the things the state demands may even go counter to their interests and needs. At its best, though, the state both helps and compels men to prevent crime, control disease, promote education, improve the economy, pursue the arts and sciences, and to accept the morality of the dominant religion. But it also constrains men, denying to them the full spontaneous exercise of their free creativity, and the expression of their deepest convictions in ethics and religion.

The state and men need one another. The state must look to men for sources of energy, effort, knowledge, and decision, and men must look to the state for opportunity, organization, and comprehensive objective. The state provides men with an enriching context in

which their separate and even oppositional activities and private, insulated interests are transmuted in interplay. In its turn the state takes account of their funded wisdom and their common practices. Without men it could of course not be, but without making proper use of them it will act but blindly and soon come into opposition with the very beings it ought to benefit.

The most signal feature of the state is its sovereignty. Take away the fact of sovereignty and the state reduces to nothing more or less than a society, incapable of indicating to itself where it should go and what it is exactly that men should do. Unfortunately, most theories of sovereignty insist on one undeniable feature of it. Some take it to be a rational or legal institution, answering a need for something to guide, control, and reconcile men; others take it to be a brute force which subjugates men without reason and perhaps without purpose; still others take it to be something which exists as a matter of fact, a product of history, neither good nor bad, not necessarily effective and not necessarily desirable; still others take it to appeal to men as that which ought to dominate. The first of these views is that of rationalism; the second, that of realism; the third, that of historicalism; and the fourth, that of classical theology.

The rationalistic theory has many forms. In some it is thought that men conspire or covenant together to produce an instrument which will do what they sev-

erally could not do, or what they otherwise would do badly. Men are thought to be shrewd enough to know that if they allow themselves to be controlled by some superior power, they will thereby attain a fuller life. Apart from such control, men, it is supposed, will inevitably be in conflict, incomplete. Such an account has difficulty with the fact that no one does and no one ought to abandon himself without reserve to any power, and that in any case no men are ever in such disaccord as to make necessary a complete submission to anyone. Moreover, an extreme disaccord would make a covenant impossible, just as a perfect accord would make it unnecessary.

On other rationalistic theories men are thought to produce a sovereign which has no capacity to persist, no nature on which it insists, no independent status or being. The sovereign, on this view, exists only by tolerance, as a kind of product which would vanish were its causes removed. These theories do not seem to recognize the power which the sovereign in fact possesses, and do not therefore see that submission to it involves possible abuse as well as possible gain. In effect they turn the power into a bureaucracy and thereby destroy the very thing they thought they had accounted for—a sovereign which can overarch and control people so far as they are in conflict with one another.

At the other extreme from the rationalistic is the realistic view. This speaks of sovereignty as a status

achieved, consequent on the exercise of some superior power. Whereas the former treated sovereignty as a position offered or created by the men who are subject to it, the latter treats it as a position won by the state itself. Men are thought to have no power or virtue which would warrant their standing over against the sovereign; all would and should be kept quiet or at bay by the superior power which that sovereign wields. For it the sovereign is coercive, brute, beyond criticism and stay. The theory inevitably has difficulty with the fact that men sometimes refuse to be sovereigns and sometimes ask to be under sovereign control, that sovereigns do recognize rights, and that sovereigns sometimes put themselves under the governance of law.

Opposed to these two views, but sharing some of their features, is the theory which insists that sovereignty is a kind of historical accident, a mere occurrence in the course of time, something which need not have been. There is no need for it to be good or powerful; if it is these it is so contingently. The next turn of the historical screw could make the sovereign evil or weak. Constantly confused with the theory of the coercive sovereign, this view is in fact quite distinct; it affirms no more than that the sovereign is *de facto* just what it happens to be. That sovereign could conceivably be one which was established by an agreement, divinely appointed, or caused to be in some other way.

Historicism makes it hard to see why the sovereign should have been recognized when it first appeared and why it should persist once it had appeared. It might well be the case that sovereignty came about accidentally, adventitiously. But whether it did or not, it answered and answers to a basic need men have. A sovereign meets a blind but vital demand which men persistently but vaguely and even incoherently express in a multitude of acts, until the sovereign happens to appear and make some of their acts unnecessary, while providing a satisfaction to men they could not have had before.

Correlate with the *de facto* theory of the sovereign is one which with classical theology holds the sovereign to be essentially a persuasive agent, perhaps a church or priesthood, or a colony of ancients or sages, which rules the rest. On this view sovereign rule is established not by force or threat, not by accident or even by reason, but by virtue of the appeal it makes to men. The persuasive sovereign may, to be sure, be a man of reason; he could also embody a force in such a way as to make men wish to be submissive to it; he could have come about as a result of a divine decree or as a result of an historical accident. But whether any of these is the case or not, he is a persuasive sovereign only to the degree that he seems to others to be one who should rule over them. But then evidently he can be a sovereign only on sufferance. He is not a real, genuine sovereign at all.

All these views have some truth in them. But the first ignores the sovereign's effort to meet human needs, the second the fact that it submits to its own subjects, the third that it has virtues in the present, and the fourth that it must exert force. Sovereignty at its best is at once *de jure*, coercive, *de facto*, and persuasive. It comes to be because it performs a useful legal function; it imposes force; in nature and range it is historically conditioned; and it does appeal to men.

Sovereignty is desired, asked for, appealed to; this the rationalist sees. But it is desired for a certain purpose and is asked for by individuals. This truth the rationalist distorts, forgetting that a sovereign owes its origins to circumstances and human needs, not altogether known or understood by men. The realists know that the sovereign has power enough to control, but they tend to forget that men can, do, and at times ought to oppose it, and that every sovereign partly sacrifices itself in functioning as an instrument for the very beings it controls. The historians see that there is a history to the sovereign and that its parts and functions are gradual products acquired over the years. What they forget is that there were reasons why these past features are now retained, and that there is a present need for, and value to, the sovereign. Finally, those who recognize that the sovereign rules through persuasion recognize something noble and good in the sovereign. They see that as a rule it is richer and more complex than any object of reason, more amenable than

a brute force, and more deeply rooted in the nature of men than a historical accident is likely to be. They overlook the fact that the sovereign has also been known to produce evil and to exhibit folly, that it has grown up over time, that it does show marks of claw and tooth, and that it has its side where it terrifies rather than persuades.

Sovereignty is at once legal, brute, accidental, and noble, expressing something of reason, power, history, and value. That is why men not only do, but want to and ought to obey their sovereign.

## 2. TYPES OF SOVEREIGNTY

Sovereignities are to be distinguished (a) in terms of the way they function, i.e., as *de jure*, *de facto*, brute, or persuasive. They can further be usefully distinguished in terms of (b) the different kinds of causes that produce them, (c) the ways in which they are instituted, (d) the nature of the groups through which they govern, (e) the number of men who exercise the sovereign power, and (f) the number of men over whom the sovereign power is exercised.

(b) Whether a sovereign is *de jure*, *de facto*, brute, or persuasive, or combinations of these, it could come about through the deliberate decisions of men—by will; as the consequence of the realization of some aim—through reason; as an adventitious product—by ac-

cident; as a kind of inescapable distillation of the folkways—by growth; or from combinations of these. Its late appearance, its decline and fall, the opposition experienced from church and individuals shows that there is no inevitable history toward the establishment, preservation, or enhancement of the sovereign. Though occasionally instituted as the outcome of deliberate effort, it is usually the outcome of chance or accident. There is then no need to appeal to an instinct to be political, or to a divine decree to account for it. However, its existence does presuppose a disposition, a readiness for it. It arises and is maintained because it does help men to fulfill themselves in ways not otherwise possible. Though the causes for its arrival and continuance may be willed, purposed, accidental, or accumulative, they are effective only because they produce something really needed.

(c) A cause of sovereignty—will, reason, accident, growth—does not dictate in just what manner the sovereignty will be instituted. No matter what the cause, the sovereign could be instituted through the agency of a constitution or other legal document, or it could be instituted by a command. Or it could be a consequence of a responsible judgment on the part of men then in power. Or it might be instituted through the production of habits of directing and obeying. Thus if men were to make a legal, deliberate decision to accept an absolute sovereign, they could carry out the decision by forging a constitution, by making effective

commands, by resolving to submit all conflicts to some institution for final adjudication, or by building and utilizing habits of control and submission.

Conversely, just as a single type of cause can be associated with different ways of establishing a sovereign, so a single way of establishing a sovereign can be associated with different types of causes of it. Will, reason, accident, or growth could equally bring about, say, a constitutional sovereign. That sovereign could be *de jure*, *de facto*, brute, or persuasive. Thus, were it *de facto* (to take one of these as an example) the constitution would certify that there must be a submission to whatever power was dominant at a given time. If this constitution had a preamble it could refer to its cause, and remark that the *de facto* power is what reason (or alternatively, a common will, the facts, or history) demands.

(d) A state is a sovereign unit, governing through the agency of enforceable laws. The instruments for that governing constitute the government of the state, and the members of the society, as subjects related to that government, constitute the people of that state. So far as the government and people are occupied with the maintenance and enhancement of the territory, and the practices and values achieved in the state, they constitute a nation. So far as the people and nation limit and qualify one another they constitute a political whole.

When government is sovereign there is bureaucratic

rule; when the people, rule by consensus; when nation, institutional—usually military—rule; when the political whole is sovereign, there is self-rule. Each one of these ways of ruling can be localized in some subdivision, or in some individual or groups of individuals. Each of them could be caused and instituted in any one of a number of ways. A national sovereign could be the product of an historic accident in which men deliberately agreed to be under the sway of the military. Or a government could achieve the rule of a sovereign by the exercise of brute force which imposed a constitution having only a persuasive power—and so on through all the different variations possible among causes, modes of institutions, and the types of groups that govern.

(e) Sovereignty can be exercised by one man, by a few men, by a majority of men, or by all men. It is this fact which has often been in the foreground of political discussions, and has been used as one of the primary determinants in the classification of states. But in fact these different ways of exercising sovereignty are compatible with quite different types of sovereignty. For example, a national sovereignty expressed through a military or through law could be exercised by one, or some, or most, or conceivably even by all men. It is rarely the case though that one man alone, without aids and without cooperation or allies, functions as a sovereign in any kind of state; it is perhaps next to impossible to get all the men in a given group

to exercise sovereign powers. The only two alternatives that can be carried out in modern states are that of a rule by a few and that of a rule by most, or what is often called aristocracy or democracy.

Since the political whole is more inclusive than the people, nation, or government, it is tempting to suppose that its rule is the most democratic, or perhaps even the only democratic, rule possible. Yet, the self-rule which the political whole allows might not be exercised except by a few representatives. On the other hand, a ruling people, a mob, is a type of democracy—in fact, for its critics, it is the most proper or normative form of it. A ruling nation can be democratic, encompassing most men, as it sometimes does in a popular revolution or in a people's army. A bureaucracy might democratically include almost all the citizens, as some small countries tend to demonstrate.

(f) Sovereignties can be distinguished not only according to the number of men who exercise sovereign power, but also according to the number of men over whom it is exercised. These numbers can, once again, be usefully grouped in four ways. We can distinguish sovereignties which are exercised over only one man, few men, most men, or all men. Sovereignty is exercised with respect to only one man where there is a special demand made on the sovereign himself, or when some individual is selected to bear the brunt of the sovereign's demands. Sovereignty is usually exercised with respect to a few men, when the majority dominates

over a minority. It is often exercised with respect to most men when the sovereignty is in the hands of one or a few. And, particularly when guided by law, sovereignty can be exercised with respect to all men, in which case everyone, including those who are designated as rulers, is subject to sovereign control.

Strictly speaking, the number exercising sovereignty and the number subject to it are independently determined. Thus a sovereignty by few or by most (the only important cases) could be exercised with respect to one, or few, or most, or all. However, if exercised with respect to only one or a few it will involve either special legislation or unduly narrow limitation. Since some always defy or escape from the control of the sovereign, sovereignty is in fact exercised with respect not to all, but to most men. The significant cases then are the rule of most by few or most, i.e., an aristocratic or democratic rule exercised with respect to most of the men in a state. That sovereignty can be exercised with good or bad intent, well or badly. It can, as we saw, be exercised, caused, and instituted in different ways, and be exercised by different parts of the political whole. Aristocracy may be desirable at some juncture of history. But in the end the object must be to rule for all, and so far as all men are equal, the object must be to rule democratically. Today, however, we can perhaps achieve nothing better than a representative democracy, where most men legally and indirectly rule most men, in a state which had been brought about somewhat deliberately.

### 3. SOVEREIGN DEMOCRACY

The causes, agencies, types of association, rulers, and subjects of sovereignty are independent in nature and function. Theoretically stated, a sovereign democracy can therefore be *de jure*, *de facto*, brute, or persuasive; it can be brought about as a result of will, reason, accident, or growth; it can be expressed in a constitution, command, judgment, or habit; it can be bureaucratic, societal, nationalistic, or political; it can be exercised by one man, a few men, most men, or all men; and it can be concerned with one man, a few, most, or all. What marks it out most conspicuously over against all other types of sovereignty is that it stresses the idea of equality of the nature, power, interest, or right in most or all men. If it stresses equality of nature, it is a democracy of a populace; if equality of power, of the workers; if equality of interest, of a public; and if equality of right, of citizens. In these various cases, the equality may be expressed directly by providing common opportunities to be educated, to work, to worship, etc., or it may be expressed indirectly through the decisions of a limited group of men.

The contemporary meaning of a genuine democracy is perhaps that of a public, governed by a written or unwritten constitution, and represented by a majority which expresses its decisions by voting. This voting is to result in the election of one or a few who are to

serve as the immediate instruments or direct representatives not of all but of the majority. The very existence of the insane, the criminal, and the senile makes it necessary to exclude some men from rule and from equal treatment. The excluded or discriminated men will of course be indirectly represented in a good state by the direct representatives of the rest; but they will not have a voice in it, nor will they make decisions even concerning their own welfare. They will be the subjects who, without the right to rebel or to make their intent effective, can only hope for a wise and benevolent rule on their behalf.

Voting is for the many who are sane and mature. Those who are capable of some kind of reasonable decision are to be permitted to express their decisions in a publicly effective way. If the voting takes place at frequent intervals, or if the decisions of those elected are subject to review, to alteration, to rejection, and to replacement, those who vote can be said to control those whom they elect. Democracy rests on the supposition that there is no better judge of the meaning and importance of concrete proposals and their relation to principles and rights than common mankind deciding freely and without fear, making use of open discussion, secret ballots, frequent elections, and the resulting representative, legal government.

A state which concerned itself with the needs, rights, or demands of only a few would sooner or later become arbitrary in its selection of that few, would in-

sist on the continuation of their privileges beyond the time of their proper use, and would soon break the state into a few in power and a many denied—and this even where it is the many which is occupied with the promotion of the benefits for the few. The only stable state is one where the majority decides. A sound democracy extends citizenship to all who are mature and who accept their duties, and it allows the majority of them to decide, usually through representatives, what laws should govern all.

Stable or not, what is wanted in a democracy is genuine public alternatives for the expression of desires. Only in this way, the democrat feels, can he fill out a public setting with his own private intent and thereby do justice to what he really is in himself while performing in public. His is the practical wisdom that the control of power should not be inherited. He knows too that there should be a balance of powers. This wisdom he tries to incorporate in a constitution and laws. More important perhaps is his persistent, effective, but inarticulated belief that his representatives should not be men of singular gifts. Anyone in principle he feels should be able to rule. It is this idea which lies behind the use of lots as a means for selecting representatives and even judges. It also lies behind the view here presented, that there are hardly any special qualifications to be asked of men who run for office beyond that of being decent and reasonable.

The higher up, the more important the office, the

more does the democrat want someone particularly qualified. Even then he does not abandon his desire that the ruler should not have a different type or kind of virtue, training, or knowledge from that open to anybody. The democrat denies that his representatives are superior in principle or promise to those they represent. Since he needs qualified leaders, he therefore seeks as his representatives men who have realized common capacities to a degree somewhat but not remarkably greater than most have realized them.

The democrat tends to oppose those who stand far above common man as well as those who stand far below. Our Adamses and Jeffersons were the products not of democracy but of a limited, aristocratic, property-owning electorate. It is doubtful that they would have wanted to be representatives today, or that, if they did have such a desire, they could have obtained much support. There is no doubt that something valuable is lost as a consequence of this unreasoned but persistent demand by democrats that their representatives not be conspicuous by an excess of virtue or of vice, of knowledge or of ignorance. But what it intends is sound and important. A representative in a democracy ought to share something of the very substance of the rest. He is to lead, not drive them. He should sense the degree to which and the pace at which they are able to move. These achievements are more readily realizable if he is not too unlike the rest.

He who would be elected in a democracy must

somehow make evident to others that he is in root a man on a footing with them. He must persuade them that he has and will express powers they also have, but in ways which few of them do or will, primarily because they do not want to expend the necessary effort and energy for the kind of returns these seem to promise. The shaking of hands, the kissing of babies, the participation in common gatherings, festivals, sports, and entertainments are so many devices by which this impression is conveyed. But it is a mistake to suppose that they suffice or that they are indispensable. It is possible to engage in these acts without providing the needed assurance, and it is possible to substitute other types of behavior, such as speeches, acts of decisive leadership, and appropriate expressions of righteous indignation for these well-tried obvious ones. A democracy becomes mature when such substitutions can be successfully made.

#### 4. MAJORITY RULE

Just as all the people could decide to accept the outcome of a roll of dice, or the command of some one of them, so they may demand that what the majority urges, the rest must accept. Before one knows just who will be members of the majority and minority on a given issue, all the people would in effect then decide to accept the decisions of the majority, and thereby

define an acceptance by the minority. This procedure does not conflict with the fact that the minority has rights of its own which that majority ought to respect.

In a modern democracy, however, the elected representatives are limited in number. They represent all the people, but are themselves chosen only by a majority. A majority of men, in a modern democracy, elect a few whose task it is to represent all.

The majority, because its decisions prevail, has a kind of absolute power over the minority. The point is sometimes overlooked because the issue may be in doubt for a while. The minority seems for a while to have a position over against the majority which it can maintain against it. But once the majority exists in fact the minority has no other recourse but to accept the decisions of the majority. No matter how slight the difference between majority and minority, the majority is sovereign and the minority subject. When a decision is made by a majority, the minority is denied a voice, unless and so far as either the minority has already subscribed to the rule that the majority's decisions are its own, or the majority decides to act on behalf of all.

Majority rule becomes the rule of all, and not merely the coercion of some by the rest, when it is a rule for all, either because the minority accepts its decisions, or because the majority is in fact occupied with the interests of the minority as well as with those which

are more pertinent to itself. The yielding of the minority to the majority is the usual way.

The hope of man is that the majority will decide or will exercise sovereign power with regard for the natures, promise, appetites, and rights of all. The minority will always be overruled in matters of religious practice, education, taxation, etc., but the reason behind such overruling ought to be that what is denied is denied to all and on the very same grounds. A respect for the rights of minorities is but a respect for the rights of the individuals who form the minority. It means that they are to be acknowledged to have the same rights as those who form the majority. Plural marriages, incest, human sacrifice, free love are to be denied to the minority, not because these are not liked by the majority, but because it would be wrong for anyone to engage in them. The representatives elected by the majority ought to act representatively even for the minority, and therefore ought to urge only what all ought to accept.

For the privilege of existing as a minority group, a minority must accept the decisions of the majority. That majority must accept the decisions too. It must voluntarily submit to the decisions which it itself makes, thereby defining the decisions to be those of the whole community. If it refuses to accept them, it defines itself as outside the range of the decisions; it then would not be a majority in the state but a force imposed on it.

A minority improves the whole by submitting to the decisions of the majority, just as a man improves the state by submitting to its decisions. Such submissions are ways of giving the whole the support it needs. The parts improve themselves at the same time, for they make a desirable order and stable rules of public conduct into parts of themselves. In each case there is a converse gain as well. Democracy is an adventure in the maximizing of these gains.

The state and a majority become responsible agencies by taking over the obligations men cannot fulfill individually. The men, as a consequence, are thereby freed from the need to carry out all their obligations toward fellow-men. The state can therefore be said to sacrifice itself for its members. It can even be said to sacrifice itself to those who abuse it, for it gives up its pristine purity as a closed totality of law-abiding men to reach out and include the very beings who deny or defy it. In acknowledging that a man has broken the law, the state in effect says that there are limits to itself and its law, outside of which the malefactor lives. By trying him as a criminal it descends to where he is. What Socrates did for himself, die for the sake of preserving the law of the state, the state, in punishing him, makes the criminal do. It thereby sacrifices itself as an ideal to which men ought to conform, to become a power which then and there makes them conform. It compels them to give up some concrete valuable good, such as their freedom apart from the state, for

the sake of a larger good, men living together in public, exercising common powers under the law.

Men appeal to the state to do what they ought to but cannot do. By appealing to it they confess a weakness in themselves which they seek to overcome with its aid. They offer themselves to it, look to it to help them on its own terms. The state is not thereby granted a perpetual control. Should men by themselves or through its aid become more effective than they were, should they arrive at the point where it is no longer necessary, they will no longer and ought no longer to look to it. Whenever the state fails to provide power appropriate to individuals, it acquires the status of an obstacle, an antagonist, an offender. Should it fail to function as needed, men will and should appeal from it on behalf of their essential needs. To be sure, the state does not usually respect their conditions; men are partially caught by it for better or worse, but this does not mean that they ought not to or cannot escape from it.

We who appeal to the state are beings with rights. We do not therefore open ourselves to it without reserve. Our submission is not final, open to no review or change. It is subject to fulfillment of the requirements that made us turn to it. We may not be able to control the state; we may be subject to a compulsion beyond our power to master. Still it is the task of the state to do for us what we cannot do for ourselves, and by appealing to it we recognize its right to determine

how we are to be evaluated and used. If a state fails its trust, as it sooner or later does, men will and ought to look from it to a state which will do more justice to them. Such a state will conform more closely than the former to the standard set by a Natural Law. To be just, a state should act as a sovereign in the light of the dictates of Natural Law.

## 6. *Natural Law*

### 1. ESSENTIAL FEATURES OF NATURAL LAW

POSITIVE LAW guides and is guided by social law. If there were no common end which different societies and states exhibit in limited and transient forms there would be no need to consider any type of law other than these two. But then men would be without any principles by means of which they could justly and objectively compare societies or states; they would be unable to criticize them on any but an arbitrary basis; and they would have no need, desire, or possibility of improving them. One must, to understand how it is possible for men inside a society or state to evaluate, correct, direct, and improve it, take account of ideals which are germane to those states and societies but not yet fully realized in them. Reference must be made

to a Natural Law to which one's own and every other society and state ought to conform, to a degree greater than they now do.

"Natural law" is a term of long and hallowed use—and of multiple meanings. It has been identified with the outcome of a participation in an eternal law, with the testimony of conscience, with the demands of reason, with unwritten law, with the rationale of nature, with a law of nations, with ethical rule, with the principles governing the instinctive behavior of normal men, with unpromulgated requirements for international cooperation, with the public normative structure pertinent to all people, and with a generic prescription which is specified in the shape of positive legislative decrees. In good part because of this wide range of unsifted meanings of Natural Law, discussion and controversy with respect to its nature, existence, and province have proved to be singularly barren. As a rule defenders have urged some one conception of Natural Law without making evident just what this was. They have been answered by critics who point up serious defects in an equally unspecified idea of Natural Law, more likely than not one which was quite different from that which had been defended. There is hope for some progress in this area only if we can become more explicit regarding the nature, being, and range of Natural Law.

A satisfactory account must do justice to the common core of the different interpretations which have

been put on the idea of Natural Law over the course of time. No matter what the theories advanced to account for its origin, to justify, or to ground it, Natural Law seems always to have been acknowledged to be a norm which is (a) pertinent to men living in a space-time world, and (b) pertinent to every society and state. On all sides, Natural Law is affirmed to be at once natural in its being (though not necessarily in origin), and socio-political in its application (though not necessarily acknowledged). Because it has this double focus, an acknowledgment of it should be preceded by some recognition of the nature of the norms men use, and of the status of the laws of nature that prevail.

## 2. INSTRUMENTAL NORMS

At times every man expresses in word, gesture, or act some dissatisfaction with the demands and nature of his community. Those demands and that nature may be expressed in social or positive law, or in other ways. The dissatisfaction may be nothing more than an irritation at what blocks the expressing or the quieting of some desire. It may go the length of expressing a judgment that there is something objectively wrong which the community is allowing or encouraging. Whichever it be, there is an awareness that something present is not as it ought to be.

Even those who suppose that the "good" and the

"right" are only other terms for the "desired" and "approved" recognize that desires and approvals sometimes are, but ought not to be, frustrated. These thinkers in fact make use of two not always distinguished ideas of desire and approval—a first order which relates men to some wanted object or result, and a second order which endorses the establishment of a first-order relation, and perhaps even the attainment of first-order goals. The awareness that something is as it ought not to be is second-order, evaluating something of the first order. This does not mean that there are no values on the first order, but only that the evaluation of the first order, whether or not it contain values, is a second-order act.

These thinkers differ from their opponents not in a failure to acknowledge or to use an "ought," but in their account of how the second-order evaluation is constituted, and in their supposition that it always endorses the nature or outcome of first-order desires and approvals. Their opponents rightly deny that the evaluations merely articulate what men in fact have desired or approved, or that second-order evaluations merely endorse first-order desires and approvals.

Men sometimes desire the wrong things, and such desire deserves criticism, not because it fails to conform to some other desire, but because it in fact reduces or promises to reduce value. A reduction in value might in fact be desired; malice is not impossible. But whether or not men want to reduce value, the reason they ought

not to do so is to be found, not in some other desire, but in something other than desire.

To this, of course, it can be answered that one can substitute "the satisfaction of a desire" for the "x" in the expression "the desire for x," thereby making evident that there is no real difference between first- and second-order expressions. But the fact of the matter is that "the desire for the satisfaction of a desire" makes use of two distinct ideas, which the repetition of the term "desire" obscures. The first use of the term has to do with the relation of a man to some prospect, the other has to do with a principle, standard, or norm applicable to the complex situation, "man desiring x." The first falls inside the second, which tests it and may even demand its rejection. The test may not be wanted; we may not like to have any of our first-order desires rejected. Since the test may not be wanted, it would be misleading to speak of a second-order principle or its use in an evaluation as though it expressed a desire. It is conceivable, too, that the test provided by a second-order principle might be unwarranted; first-order desires and other relations and activities might conceivably be evaluated on no rational or justifiable grounds—which is perhaps what these thinkers wish to say, in a strange harmony with those who ground their "oughts" in the commands of a God. But arbitrary or not, the fact is that there are norms that men employ in order to test, measure, and evaluate what they intend, and what they do.

Even one who claims that all things are indifferent must at least tacitly acknowledge an ought—unless he is willing to allow that it is indifferent whether or not the stage where all is indifferent should continue, should be acknowledged, and should be truthfully portrayed. For him, as for the rest of us, there are many ways of relating what is now to what is future and wanted. Some of these ways are for him, as they are for the rest of us, better than others. He may, to be sure, merely feel or assume that they are better; he may be unaware of any principles which can be or are used to evaluate them; he may be quite capricious in the way in which he employs them. But in every case he will deal with the relation of what is to what is wanted from the vantage point of a norm. For him, no less than for one who is concerned with the relation of what is to what is good or valuable (rather than to what is merely wanted), there are preferable links between the present and the future. There must be something, a norm, in terms of which one link ranks higher than others.

Men, more or less explicitly, more or less clearly, more or less consciously, acknowledge a norm which enables them to evaluate first-order relations connecting what is present with what is future. That norm is a standard of excellence for the choice of means. Those means relate men in the present either to what is wanted by them, to what ought to be, or to what is both wanted and ought to be—in short, to some accepted end. When used to assess and order the rela-

tions that connect men with such an accepted end, the norm has an *instrumental* function. Since the governance of such a norm is over occurrences in this space-time world, it must have the structure of a law of nature. Whatever follows the route of one will follow the route of the other. A fulfilled instrumental norm is any law of nature which is exhibited when men act to get what they want, what they ought to have, or both.

### 3. LAWS OF NATURE

We now seem to be close to the classical view of the laws of nature as imposed demands which, in their rigidity, imperiousness, and finality, look like the commands of the Hebraic God. But laws of nature are not imposed from without; they carry no sanctions and require no sovereign; they bear no marks of will or intent, of purpose or wisdom. We need not, however, go to the opposite modern extreme and suppose that laws of nature are nothing but summaries of inductive generalizations, high correlations, and statistics, spiced with some semantics. Indeed, both of these positions express a common regrettable tendency to suppose that what is natural or right is in root arbitrary.

The classical view looked at nature in the light of a stern dogmatic ethics. It supposed that a law of nature was imposed somewhat as an ethical command might be imposed by an omnipotent being—as that which

ought never to be violated by men or things, but which was capable of being relaxed by the power that originally forged and imposed it. As miracle and mercy testify, it held, God does not always insist on the fulfillment of his commands, in nature or by man. The view, too, at times allowed that it was possible for men to disobey the laws of nature as well as those of morality; they could engage in "unnatural" activities, though of course not without paying dire penalties. The positivists, ancient and modern, on the other hand, have instead looked at nature in the light of positive law. The laws of nature were held by them to be, like positive law, conventional, constantly changing, empirically discovered, and humanly produced. From this perspective what is said to be stable and just is a useful fiction, marking out an acceptable resting point in an endless flux and world of compromise. But there is no need to retreat to the somewhat arbitrary ultimates of either of these opposed positions. A law of nature is not supernatural or subjective, a matter of fiat or design, of private decision or individual will. The course of the world does not vary with shifts in intent, divine or human; it has its own autonomy, its own rationale, no matter how it may have started and how it may be known.

A law of nature is a law in nature. If it had an origin outside, that is not evident in it now, nor relevant to what it is like or how it operates. This is really admitted on both sides. The classicists allow that once God has

laid down his laws these can operate without divine supervision, and the positivists allow that once a convention has been established it may operate without human intervention or control. For both, then, there are laws of nature governing men and things.

Laws of nature offer intelligible links between a present and a relevant future. They exhibit the qualification of a purely formal structure of time by an implication linking present objects with their characteristic prospects. The laws of nature are thus a logico-mathematically infected time, a time germane to the things that now exist as well as to what they can become. The laws do not make anything conform to them. But since they specialize the formal structure of slabs of real time, they are inevitably exhibited in every activity. And since they are ingredient in and sustained by real things, the laws are, as Peirce remarked, like habits, capable of slow change.

Because there are laws of nature, the future can be predicted with the aid of logic and mathematics. Such prediction is compatible with indeterminism, just as the incapacity to predict is compatible with determinism. Determinism is the theory that the objects and results in the future are already determinate, i.e., that of every pair of contradictory predicates whatsoever, one or the other now characterizes whatever has a future date. On this view the passage of time and what happens in it make no difference to the nature of the result; they govern only its appearing to us. Were there

such a deterministic world we might not be able to make predictions if we had no adequate knowledge of the nature of things and the way they were related to the future. On the other hand, if the world were indeterministic, prediction would be possible so far as the beings in it acted and produced in monotonous ways. There is, however, no warrant in science or philosophy for the supposition that the future is already determinate. There are no determinate objects there; only indeterminate future prospects. Things are related to those future prospects, by quite definite but not altogether particularized and filled out structures. Their existence through time involves the conversion of those future prospects into succeeding, concrete, determinate presents. The prospects were implicated by the things, and could therefore be predicted; but their concrete fillings, and thus the actual events that ensue, depend on the not yet determined activity of the things.

Traditionally, the laws of nature have been viewed as having an exclusive or primary reference to inanimate beings. Man, particularly as part of society or history, was thought to be wholly or partly outside the scope of nature's law. He was supposed to have a facet—a mind or soul—outside nature, and like a God was, through its means, thought capable of introducing complications and exceptions into the well-ordered course of events which otherwise would prevail. But if natural laws hold anywhere, they hold of men. Men,

especially in society and state, make use of the past and move into the future in law-abiding ways.

It is one of the ironies of the history of philosophy that David Hume, whose first book had the revealing title *A Treatise of Human Nature*, and who tried to formulate laws governing the way in which men connected the items of their experience, sought to ground a theory of ethics applicable to all, opposed the reliability of reports of miracles on the ground that reports of regularities were more reasonable to accept, and spent his mature life as a historian tracing the causes of major events, is treated as a radical skeptic who denied causality, necessity, and the reality of laws. Reading Hume as though he were an empirical follower of Kant, or a kind of belligerent Mill, his modern disciples suppose that he denied the applicability of the idea of causality, necessity, and law to man. He was thought to hold that man is just a being in nature, and that like every other there, he had to be outside the reach of causality, necessity, and law. But what Hume insisted on was that although, or perhaps because, nature had no inherent, intelligible necessities, men did. For him the ideas of causality, necessity, and law are the outcome of the way in which men regularly respond to what they encounter. It was his view that while nature might be nothing more than a locus of disconnected items, men not only connected past with present in definite, predictable ways, but were themselves law-abiding beings.

With Hume's disciples one ought to say that man is in nature, and that the principles which govern it also govern him. But with Hume one ought further to recognize that in man's world things occur in predictable ways. If one were to hesitate about the reality of causal necessities, one ought to begin and end where Hume does, and just question the law-abidingness of inanimate beings. No one of us is really altogether sure that all inanimate beings are similarly related to the same possible outcomes. But if we are not sure of this we cannot be sure they are law-abiding. If we doubt that inanimate things have genuine common natures, which they severally instance, and which implicate certain future possibilities, we are unable to affirm that their actions exhibit common characteristic regularities.

If inanimate things did not have common natures and did not implicate certain possibilities they would not form a real class or be law-abiding. But men, at least in society and state, do form real classes. They have common natures and ends connected by means of the rational, predictive frame of law. They could form such classes even if they acted, as things are often supposed to do, without prevision, without purpose, compulsively going from stage to stage, or from position to position—for they would then have common features and termini, though they would not know or desire these. The very fact that society and the state make men respond in common ways suffices to make

men, so far, similar members of the same class. If those responses are directed toward the same end, they are responses under the aegis of a law of nature.

Men alone, it is conceivable, might be governed by a law of nature. This would not mean that they would necessarily stand outside nature. They could still be part of nature with other beings, but those others, on the hypothesis, would not have ordered careers. Nor need we suppose that if men, by virtue of a common social, political reference to a single end, were governed by law, they would have to have fixed natures, Aristotelian essences. They could have common natures because of the pressure exerted by tradition, by the institutional patterns of their societies, by virtue of their habits, and so on.

These are all cautious observations. Men are law-abiding in and outside society; subhuman beings are also governed by law. Men are governed by law because they form classes due to an antecedent conditioning by society and state; they are also governed by other laws of nature, because they, apart from society and states, aim at a common end. And other beings are also law-abiding. All things are under the aegis of common laws, men in addition being subject to further laws of nature which pertain to the men when they have been unified and qualified by society and state. Both the common laws governing all and the limited laws governing societal and political man leave room for freedom, for laws are general, and allow for many fillings,

to be provided then and there by the beings which act and move through time.

No laws dictate just what their fillings will be. Just so far as the laws are necessary structures, just so far will they be filled in freely. Men fill in the structures sometimes through an act of free will; all other beings always, and men sometimes, fill them without decision, foreknowledge, or interest, in the very course of existing through time.

#### 4. SOCIAL NORMS

Like the other beings in nature, men are poised on the edge of the present, about to make concrete the abstract future they implicate. That future is the domain of possibility. If any of the possibilities is aimed at, it has the status of a *goal*. If it is aimed at by a number of men, it has the status of a *common goal*. The common goal of men in a given society or state is the *common good*. The common goal of *all* men is the Ideal, what ought to be, what is in fact needed and should be desired by all.\* The goals, the common good,

\* It is conceivable that all men might deliberately or even unconsciously aim at a goal it would be undesirable for them to attain; but subtending that aim would be another which, by virtue of man's nature, terminated in the Ideal. The common social good in contrast is what ought to be only for a limited number of men in a society which has in fact helped remake them in such a way that they all inescapably aim at that common social good.

and the Ideal need not be known or consciously pursued. Men may in fact so act that they do harm, evil, go counter to the demands of the ends at which they aim. But by virtue of their membership in society, state and mankind, men continue to aim at those ends, and those ends in turn dictate what ought to be done.

Under the influence of a common past, a common experience, and a common society men face the common good, the good of them all together. That good prescribes that all men are to receive their due in harmony, that they are to be dealt with justly. The men as terminating in that common good are comparable beings, though inwardly unique, irreducible, unduplicatable individuals. The good may not be clearly known to any of them; often it is realized in inadequate ways. When men realize it, it may be with opposing emphases, and the result may be worse than that which had been before. But it does express a value which could be so realized that men could be perfected together.

The common good (and, of course, the Ideal as well) ought to be, and what it requires for its realization ought to be done. As the termini of the aims of men, it demands that the men act to bring it about. The reciprocal of that demand is a law of nature functioning as a second-order relation, a social norm. Men should subject themselves to the social norm, should exhibit that law of nature which the common good favors.

A social norm is a law of nature pertinent to men and made preferential by the common good (an act which might itself be governed by some law of nature), and defining the most desirable route for reaching that good (which itself might be focused on under the aegis of a law of nature). It is neither more nor less than a *Natural Law*. A Natural Law thus is a law of nature made preferential, given the status of a norm, by the common good.

An objectively binding intelligible link, the structure of time so far as this is affected by the common good, a Natural Law is relevant to a real class of men in a society or state. As has been traditionally remarked, it provides a standard of value of whatever is done in society and state, and can be used as a guide to determine the worth of positive laws and the acts which these prescribe. It is discernible with more or less clarity by everyone, because everyone, with more or less clarity, is aware that his acts are measured by a norm not necessarily incorporated in any social habits or legislation. It is to this norm we must look if we are to measure the worth of various types of means that we might employ to bring about the common good.

The most that a law of nature which has not been made preferential by the good could tell us is something like, "If justice is to prevail, this and that are to be done." But a Natural Law says, "Since it is good that justice prevail, this and that should be done." Both ask for the very same acts. The one, however, does

it under the condition that a certain objective be accepted—a condition which may not be fulfilled; the other does it as a consequence of a demand that continues to be made even when defied or ignored—a condition which is in a sense always fulfilled, though only in the sphere of right and wrong. The one tells us what must be done if a certain result is to be reached; the other tells us what should be done because a certain result ought to be reached. The one demands no action; the other does. The one has no normative role and does not presuppose that there is purpose, value, or a desirable goal; the other does.

The fulfilling of the condition in the sphere of right and wrong which the Natural Law exhibits is identical with the election of some law of nature as that which ought to be exhibited. A failure to act in conformity with a mere law of nature, entails conformity with some other law of nature, having a different outcome, and that is all; a failure to act in conformity with that law of nature as made preferential, and thus a failure to act in conformity with Natural Law, entails in addition the charge of social ineptitude and guilt.

## 5. FEATURES OF THE NATURAL LAW

Natural Law is natural in a number of ways. (a) It is in the natural order, not in the supernatural. Natural Law is wholly worldly law. To be sure, a God might

demand that it be; he might provide the goal which operates to make a law of nature preferential; he might help a man become aware of it and to live up to it. But whether he does these things or not, the Natural Law functions apart from him. Its goal is germane to political and social man, regardless of its origin; it acts on man, who, while wholly in nature, is together with fellow-men in society and state and is there subject to obligations to realize the common good. (b) Natural Law is a work of nature, not of art. It is not designed by anyone, brought about through effort, with purpose, or through the use of learned techniques. It is a law of nature which is not only rooted in social beings on the one side and their common prospect on the other, but is affected by the excellence promised by the latter. (c) Natural Law is part of a public nature, and thus contrasts with that which occurs in the private recesses of a man. Its domain is the realm of space-time beings, though it is first acknowledged in private. Governing only the acts of men, it spreads over and through the public world in such a way as to infect it with the demands of what ought to be. (d) Natural Law results from the operation of impersonal forces; it is not the product of volition. One can willingly, of course, turn to it and submit to it. And it does have to do with man and his goals. Men may detest it, may wish that it did not exist. But none of these truths affect its being or operation.

Natural Law tells us to bring about a social justice

in the best possible way. The best possible way is justly. One ought to get to the good in ways which are themselves good or which at the very worst involve the least loss of present value. There are, to be sure, times when harm must be done in order that good be obtained, but this is always regrettable. In the ideal case the good is achieved through the agency of acts which are themselves worth doing, which are themselves in conformity with the nature of the end, and are not merely instrumental to the attainment of that end. Where it is impossible to have such acts, one ought so to behave that there will be the least possible deviation from them or their outcomes.

With ethics, Natural Law urges the minimal demands of social justice, asking for acts which are relevant to the ends that social and political man ought to attain. But it is not to be identified with ethics. Firstly, Natural Law lacks the absolutivity, the universality, and the comprehensiveness of the ethical. The latter applies to all men all the time; the former applies only to men as in a society or state. Secondly, ethics does not change in content with time. But the content of Natural Law must so change, since it relates men in different situations to a common end, requiring now one law of nature and then another to be in operation. Ethics, thirdly, pays attention to the will; Natural Law does not. There are good and bad wills for ethics; for Natural Law there are only good and bad acts. Fourthly, ethics, in contrast with Natural

Law, takes account of personal as well as of social and political goods. Ethics can challenge Natural Law at times on behalf of the good of individual men as outside the area of social and political life, where they are at times when they are lonely, when in love, when they think, and when they are active in art, speculation, and religion. Man's private life is altogether outside the orbit of Natural Law. But much of it is within the province of ethics. Ethics, finally, is considerate of nonhuman values, of the values in animals and inanimate things; Natural Law is not.

Because Natural Law is oriented in present men and present societies and states, because it terminates in an end not necessarily explicitly desired, and because it provides a route along which actions can but may not proceed, it is like positive law. Some thinkers as a consequence have supposed it could be characterized as what positive law ought to be. But there would be a Natural Law even if there were no positive laws, and even if it were desirable that there be no positive laws. That is one reason, too, why Natural Law cannot be treated as a universal which is inside positive law, serving to regulate it. Another reason is that some positive laws are bad, going counter to what a Natural Law demands, and cannot therefore be said to exhibit it—unless, in opposition to lawyers, states, and general practice, we deny the name of law to anything which violates Natural Law. A third reason is that Natural Law applies to societies which have yet

to be encompassed by a state and ruled by positive law.

Positive laws and Natural Law are distinct; the former ought, though, to conform to the latter. Positive laws, however, remain laws even when they do not so conform. This is not yet to say that the positive laws ought to become like Natural Law. If they did they would lose virtues which they have: they would, for example, cease to be articulated, enforced, or known. The fact that positive laws ought to conform to Natural Law does not mean that Natural Law has all the desirable features that positive laws possess.

The recognition that there is a Natural Law has been, but should not be, used to support the view that men once lived or should live in a primitive state of nature. A primitive state of nature is not necessarily a place where good is done. Nor does Natural Law decree that men should obey existent positive laws and powers. Such laws and powers might be defective, might be in opposition to the requirements of Natural Law. Nor is Natural Law identical with international law. International law may not be in existence always, nor be pertinent to the members of the several societies and states; also, it requires enunciation and the use of force. Nor is Natural Law identical with what conscience affirms. Conscience sometimes does not recognize what Natural Law demands, and sometimes asks for acts outside the province of Natural Law. Nor does Natural Law require the acknowledgment that men

have native rights. Not until men have self-alienated their native rights in order to forge an unalienable right to benefit from public existence does Natural Law have any application.

The Natural Law is no substance, and has no being beyond that possible to the structure of time as enhanced by the social good that ought to be. Were there no such good, were there no time and no laws of nature, were there no power on the part of the good to characterize some law of nature as excellent, there would be no Natural Law. But these are; Natural Law achieves reality because the social good in fact ennobles some relation which men have to it.

Present things are in part as they ought to be. But they are rarely all they ought to be. What ought to be is not yet fully realized. What ought to be is not as rich, as vital, as substantial as that which exists in the present. The "is" and the "ought" are distinct but not necessarily forever divorced. Their joint acknowledgment causes difficulty only for those to whom the present is rigidly divided off from the future, and the second-order norms from what they evaluate.

All of us are at least dimly aware of Natural Law because we are all at least dimly aware of the nature of the social good, of values that now prevail, of laws of nature that can connect the one with the other, and of the fact that the social good makes the operation of some laws more desirable than the operation of others. We come to know the social good, the values, the laws,

and the norms clearly and precisely by organizing our experiences, completing our analyses, interrelating our reflections, and systematizing our speculations. And we engage in these acts as the outcome of an attempt to grasp what it is that we always are and always need. Few of us persist in the effort to achieve such knowledge, but all of us adventure enough in that direction to make it possible to say that Natural Law, its conditions, and its demands are known to some degree by almost all.

Natural Law is wide in its application and vague in its demands. It is a law for social and political men, and presupposes that they have moved from the stage where they are private beings to where they are men together directed toward a common goal. It needs a society or state, but no society or state could exist with it alone. In a state it should be supported both by habits of reasonable and decent behavior and by positive laws. No state can function long or well unless it uses those habits and laws to assure that certain limited jobs are done in different areas and at different times. It demands work which is much more limited in range and character, much more occasional and particular than the Natural Law can provide.

Natural Law, as has been remarked, can and ought to serve as a guide for the formulation and criticism of positive law. Indeed, the very attempt to apply a positive law presupposes a use of Natural Law, as is perhaps most evident when one attends to the legal

status of one suspected or charged with a violation of a positive law. To speak of a man as a criminal before he has been found guilty is either to speak anticipatorily or is to view him in terms other than that of the positive law. Until he has been found guilty he is one who acts in ways and places which the state and its laws have not yet mastered. He cannot be said to defy or deny the law, for he has not yet been confronted with it. To defy it he would have to face it and struggle against it. Until he does this he may be said only to attempt to act in ways which seem likely to fall under its interdiction, or to act in ways which violate the demands of Natural Law.

Men are brought to book for what is known to go counter not to positive law, but to Natural Law. There are no crimes, no violations, no wrongdoing from the standpoint of positive law until there has been a conviction. Every act of a man in a state can in fact be said to raise a question as to the meaning, existence, scope, and role of positive law. Consequently, every positive law is actually *post facto*, being effectively enacted with respect to acts which not only occurred antecedent to its application (which is obvious), but which could not be wrong until the law was applied to them, and they were thereby found wanting.

Nothing less than an acknowledgment of a Natural Law permits one to avoid the purely pragmatic view of the law as that which supposes that only he is a

criminal who has been convicted, only that is a crime which has been legally punished. Natural Law allows us to define a wrongdoing which is wrong apart from positive law also relevant to it.

As a rule men make use not of Natural Law but of social law to characterize acts and men which have not yet been controlled and judged by positive law. Were such social law not in consonance with what Natural Law requires, men would be asked to conform only to various conventional demands, and to expect that the best positive law will decree punishment only if the men fail to conform to those conventional demands. Positive laws would be good just so far as they articulated the tolerable ways of men in limited groups, and not so far as they expressed norms to which the men, because concerned with reaching a common good, ought to conform. But then no positive law could be criticized for being objectively unjust, but only for being unconventional.

It is a judge's function to look at positive law from the side of society and the state as well as from the perspective of social and of Natural Law. Because he is a part of a society and an agent of the state, he should know what it is reasonable to do in that society and state. But he must also be aware of the fact that some of the things men do, even though socially and politically reasonable, ought to be muted, changed, opposed; otherwise many a horror or wrongdoing will receive

his sanction. He must also be aware that laws of the state are not to be interpreted literally, but in the light of what absolute justice demands; otherwise he will overlook the fact that the men in his state are sometimes to be judged by principles which are germane to men in other states and societies.

Natural Law stands in between positive law and a more comprehensive law, a Law of Civilization, which is pertinent to men regardless of what society they occupy and what their states demand. That more comprehensive law demands the achievement of perpetual peace and prosperity for mankind. It is interpreted by the wise judge in the shape of a Natural Law germane to his own state. He may go counter to what his people in fact do or demand and what the legislature decreed, but he will do so only because he recognizes the overriding right of the Law of Civilization which he interprets in the form of a relevant Natural Law. It is this which both the people and the legislature ought to, and in root do, intend to express in the shape of social and positive law.

Some judges and sovereigns tend to yield to the insistent demands of social law; they want, above all, to avoid inflaming the people. In this country they are inclined to overstress "states' rights" and to condone or tolerate the practice of segregation in areas where this has been the prevailing mode. Others try to back up the intentions of the legislature or past judicial de-

crees. They are inclined to overstress "The Law," and to force men, no matter what their habits and inclinations, to conform. These two types of approach are in opposition, and always have been. There is no way of adjudicating their differences except by brute force, or by an appeal to the neutral rule of a Natural Law. And in fact each side in the end does appeal to Natural Law for its justification, the one saying that Natural Law supports stable ways of acting, the other that it supports the rule of positive law. Natural Law does both these things, but only so far as they are agencies for the achievement of the social good for all. It offers an evaluation of both the stable ways and the positive law in the light of the degree to which they then and there promote that good. Each may be found wanting at different times, and in different degrees and ways. The most difficult task of the judge is to know how far he can go in opposing or altering them in the light of what he sees to be the demands of the Natural Law, particularly since his understanding of Natural Law is fleeting, fragmentary, and involves an awareness of rules and conditions outside the area of the state whose agent he is.

Natural Law, apart from positive and common law, enables one to evaluate all that social and political men do. It leaves much unsettled, much unknown, not the least being the matter of determining just what and just how much is now to be sacrificed in order that

justice be done to all always, and that peace and prosperity forever reign. The work of the state is the progressive, tentative, experimental, persistent effort to fill out what Natural Law persistently, but vaguely and abstractly, says ought to be.

## 7. *The Limitations of the State*

### 1. THE STATE AND HUMAN NATURE

THE NATURE and aim of a state force some laws of nature to assume the status of Natural Law for it. It is conceivable that no one in the state may know that there is such Natural Law. The state itself may show no sign that Natural Law provides an inescapable norm. The state's practices, the social law it accommodates, and the positive laws it enunciates and supports may ignore and even conflict with what that Natural Law requires. So far as that is the case the state is imperfect. It is perfect only when it expresses and in fact carries out Natural Law in its legislation, legal decisions, and political activities.

No two states start at exactly the same place; no two can follow the same route to get to the same end in the most expeditious way. Because Natural Law is a function of the particular situation in which a given state

finds itself, as well as of the social good at which the members of the state aim, Natural Law must have a different specific form in different states. There can then not only be a number of imperfect states, states which inadequately express the Natural Law that governs them, but there can also be a number of perfect states, which though equally effective in reaching the same social good of peace and prosperity, are and must be governed by different Natural Laws.

Were the end which the state promotes the only or the most complete good, Natural Law would represent the supreme norm in terms of which man and his actions are to be judged. But this is not the case. The best of states has a limited aim and limited accomplishments. No state does or can take account of all sides of human nature, all the needs and appetites of man; no state does or can do full justice to the full range of man's public promise. The first of these failures points up the need for supplementing political life by (a) ethical, (b) aesthetic, (c) religious, and (d) speculative ones; the second points up the need to consider a law beyond Natural Law, and to see the value of a public world more comprehensive than that possible in a modern state.

(a) Natural Law and ethics, it was remarked above, are not coextensive. Unlike Natural Law, ethics is absolutistic, universal, comprehensive, applying to all men all the time. It is unchanging in content, pays attention to the will, is considerate of nonhuman values, and

is germane to men both as public and in their privacies. But from an ethical point of view, acts to be excellent should be carriers of intentions. To say these things of ethics is of course to depart rather radically from those who think of it as identical with social law, or with the principles which govern that social law. But what else is this which makes demands on men regardless of what their social law requires, which enables us to evaluate whatever social law there be (and even the demand that there be a social law of some kind), and at the same time enables us to evaluate the need for, the activities of, and the achievements of the state and civilization?

Ethics is grounded in an absolute Good at which all men aim, by virtue of the fact that they are men, possessed of persistent selves. Because men are obligated to bring about that Good everywhere, they are required to act on other beings—men and animals and things—in such a way as to perfect them, for the perfecting of a being is one with its embodiment of the Good. They are able to fulfill this obligation in part through acts which are rooted in free decisions of the will. Such decisions are steps in the formation of a character of moral excellence.

Since ethical demands are made on all men, regardless of what groups they form, the work of a state can at best provide only a limited and partial instance of what ethics requires. Since public life never exhausts the meaning or promise of private life, since no politi-

cal existence can ever wholly encompass man as ethical, part of man's ethical existence must be spent in radical privacy. His intentions, his desires, his hopes and fears, his love and hate, his willingness or unwillingness to immerse himself in public affairs are subject to ethical judgment, whose outcome may conflict with a political judgment or transcend it altogether. The state falls short of encompassing the ethical man. But the ethical includes the political in the sense that all that is politically done can be evaluated in ethical terms, as being the expression or violation of an ethically sensitive intent.

(b) Politics is the art which seeks to achieve peace and prosperity. This outcome is promoted by a sensitivity to what things are; the aesthetic man is valuable for a state. Without him there would be an inadequate grasp of the nature of things, their needs, their possible promise, their sensitivities and their full use. But, though he does attend to what the state does and might do, his interests are somewhat outside its reach; he is sensitive, enjoying the nature of things apart from their use, apart from their ability to promote the social good. The facets he notes and the judgments he passes on them need have nothing to do with what will help promote the social good.

When the aesthetic man moves on to express his insight in the shape of works of art, he enters into the public arena, and there inevitably falls under the judgment of social demands. So far as he spends time away

from social work he can be judged as one who ought to live, but has not yet lived, adequately within a public frame. But both his private judgments and the art work, which might exhibit these, have an integrity of their own, answering to man's need to fulfill himself both by an enjoyment of the integral being of things and by a reconstitution of himself and other things in more dramatic, unified, and revelatory ways than any political whole requires.

(c) Religions are occupied with the instituting of a proper relation between man and some ultimate valuable reality. That reality might be conceived to be not alien to or distant from the world of space-time things; it could conceivably be one's nation, society, or tribe. But to serve as the object of a genuine religious attitude it must be seen to have a cosmic significance, to be coextensive with the real world. National, societal, and tribal religions tend to reduce the cosmos to the size of the nation, society, or tribe; an essential mark of more sophisticated and mature forms of religion is the recognition that the object of man's devotion is broader in scope and more perduring in nature than nation, society, or tribe are or can be.

In modern times and in our society the term "religion" has, largely under the pressure of the dominant institutional religions, been reserved to characterize those attitudes and activities which are directed to the most perfect of beings. For some, this being is limited though superior to all else. Not absolutely perfect,

not the creator of all else, it is nevertheless thought to possess more virtues, powers, a greater degree of excellence than anything else has or could have. For others the most perfect of beings is hardly separable from the very unity of the cosmos; it is a brooding presence governing the course of events, and making itself explicit and manifest through all history. Others take the being to be outside all time, existing all alone. In different ways these otherwise opposed religions struggle with and too often yield to the temptation to attend not to the nature of this being, but to what must be done here and now to earn his help or compassion. The temper of these religions and their members is primarily practical. Instead of devoting themselves to the knowing, worshiping, or enjoyment of God, they spend much of their time and energy in trying to earn forgiveness, mercy, or salvation.

Again and again in the course of history states have tried to make themselves coexistent with religion or have tried to subordinate religion to themselves. But at the very best all they could achieve was the mastery of the outward forms which religious men and religious institutions might assume. Though Whitehead's definition of religion as "what the individual does with his own solitariness" is much too Protestant—and Low Church in the bargain—to be adequate to national, tribal, and institutional religions, and to those which put primary emphasis on good works rather than on faith, it surely is the case that religion cannot be en-

tirely sundered from an attitude of worship and reverence which is carried on in the private recesses of a man. The difference between the letter and the spirit, or between the obtrusive act for base motives and the private, hidden right intent to submit before the majesty of a primary value, divides pseudo-religions and pseudo-religious men from the genuine.

No matter what men take to be the reality which they think all should acknowledge as supreme in value, and no matter whether this acknowledgment is taken to be final and valuable in itself, or as a means for attaining some precious good, no matter how much they immerse themselves in institutional practices and public ceremonial, religion in the last resort is a private enterprise. Public rules, conditions, requirements in good part offer only so many different ways of canalizing, restructuring, stabilizing, and utilizing the awe and honor which men privately show to the divine. No society or state can do justice to this private side. The most they can do is to encourage or discourage, give help and support to, or put obstacles in the way of institutions and public practices.

Insistent and omnipresent though they may be, no society or state will ever cut deeply enough inside a man to determine or control his being as a religious man. They may, to be sure, influence him, condition him, educate him, so that what he does as a private being is in good part a reflex of what the society and state demand. But in the end the decision to yield to

these or not, the use to which these demands are put, the question whether they are to be accepted in the forms imposed or otherwise, and most important, the degree and manner to which he gives himself in dedication to a supreme value, is outside their province and control.

(d) Man is not only ethical, aesthetic, and religious, he is also speculative, with a free imagination and reason, one who can reconstruct and envisage what lies beyond the obtrusive data of daily life and perhaps even of the world of which that data is an expression or a part. No more than the others can the speculative man be entirely brought under the aegis of the state. Again and again, to be sure, states put serious obstacles in the way of the continuance, the leisure, the peace of speculative men. A state can effectively bring their activities to an end, and not only by killing them. Deprived of food, comfort, and sleep a man eventually loses appetite and capacity for reflection, fresh thought, and new insights. Those who subject him to these deprivations are, however, usually still themselves open to these very same lures. Also, the young and the not yet fully trained remain outside the limits of full political control, and have moments of free imagination and reason. Of course it is conceivable that a state might be so brutalized that neither rulers nor ruled, young nor old, will exercise speculative powers even to a minor degree. This consideration makes evident, not that the state can catch the speculative man within

its orbit, but that it may not allow the existence of men outside its orbit. Like ethics, aesthetics, and religion, speculation has a private dimension whose very existence requires some public tolerance, help, and support, but which itself is never reducible to any public conditioning or manifestation.

## 2. THE STATE AND PUBLIC MEN

The state fails and must fail to do full justice to man's private nature, promise, and achievements. It also fails and must fail to do full justice to the full range of his public nature, promise, and achievements. Forced to begin with whatever men, customs, and material are available, the state at its best is only faintly concerned with the fact that men have powers not yet exploited, that their customs may be larded with superstitions, and that the material available to them may be but a fragment of what is necessary if they are to be fulfilled. The state takes men as it finds them; it deals with them as actually or potentially exhibited within well-defined areas previously demarcated by laws. No state, moreover, has the time, energy, or interest to encourage the full development of the arts and sciences. It has work enough fending off enemies, stabilizing its economy, overcoming internal dissension. It cannot attend properly to the needs and ultimate fruits of a liberal education.

Even with the best intent no state can fully appreciate free, fresh, daring activities; none has more than a limited tolerance for deep-rooted opposition to long-established practices and decrees. The state is a conservative whole, and what breaks into its established ways represents a challenge to which it responds slowly but remorselessly and effectively. The progress that has been made in states has come largely unawares, welling up out of the heart of society and becoming stabilized or effective before the state has been able to deal with it in its accustomed ways.

A state proceeds slowly and by compromise through the morass of daily life. Though its acts often have an insistence and urgency brooking no delay or denial, it behaves as though men and time were in endless supply, and as if the anguish and injustice of today could be wiped out by a success in the remote future. No real effort is made to rehabilitate the felon and cause him to make an even greater contribution to the state than any one else, in recompense for the crime he committed and the difficulties he put in the way of the functioning of the state. No state has well-laid plans, clear objectives; all live from day to day or year to year, taking first this way and then that in an attempt to keep abreast of nature, of other states, and of the wayward acts and tendencies of individual men. To bring about its massive results, each runs roughshod over the sensitivities and ineffable allegiances and aspirations of men. Not necessarily brutal or unaware of

men's rights and private natures, it nevertheless deals with them as though they were wholly public; it is content to train rather than to educate, to discipline rather than to transform. Enabling men to reach a common goal together, it molds them to conform to definite patterns. Since it does not concern itself with their individual twists and nuances, it cannot help them enjoy their common goal. For it, enjoyment is necessarily a private individual matter, outside its reach; it can do no more than provide occasions, restrain the expression, qualify the character, dictate when the enjoyment might be present or evident in high degree.

Most important is the fact that the existence of even the best of states does not necessarily tap all the powers that men possess; nor does it satisfy every dimension of their beings. A perfect state could be spartan, with the men in it denying themselves in multiple ways in order to be ready for emergencies and to prepare themselves to be fulfilled as purely public beings. A perfect state might take great advantage of the powers and fruits of nature, or, without affecting its perfection as a state, it might exploit only what was absolutely necessary for the well-being of its members. The needs, nature, and obligations of a perfect state dictate only what ought to be done in order to provide for that justice, peace, and prosperity which enable men to live effectively together; it therefore could conceivably make room for rigidities and differential privileges of all grades and kinds. A perfect state does not de-

mand an egalitarianism; it could even tolerate slavery on the ground that slaves were lesser men whose proper function was to serve and obey in order that the good of the whole be achieved and preserved.

The most perfect of states has definite limitations. Not defective as a state, a perfect state is defective in the sense that it can include only part of man and satisfy only part of his promise. Expressing itself in positive laws which fully satisfy the demands of Natural Law, it will fall short of a standard standing outside and apart from all states. No matter how excellent a state might be, there are rights and virtues, interests and powers in men which can be exercised only so far as they, while in a state, can exist outside it—and this without leaving the natural order of things. There is a standard which is applicable to a man as a member of mankind working out his destiny together with all the rest in terms not defined by the several and somewhat opposing states in which they live. In terms of this standard all states will be found wanting. That standard is the Law of Civilization.

### 3. THE LAW OF CIVILIZATION

When there is a conflict between social and positive law, as is conspicuously the case in the United States today, recourse must be had, as has been remarked,

to Natural Law. Natural Law provides a *tertium quid* between social and positive law, capable of measuring both. If these fail to submit to it there is nothing left to be done in a state but to see which one can gain the upper hand, and then to affirm (since on the hypothesis we have no further measure of right and wrong) that the conqueror has thereby proved himself to be in the right. We would then have to agree with those historians and political thinkers who call a revolutionary who fails "traitor" and one who succeeds "hero," and who term that legal order which gives way before social practice "effete" and that which dominates it "right." But if we look to Natural Law we will be able to say that it was good or bad that this or that revolutionary or legal order prevailed or succumbed. We will be able to say that neither those who today in the United States stress only the Southern way of life nor those who insist only on attending to the demands of positive law are or can be altogether right. It enables us to say that both have some warrant and that therefore each side should yield to the other for the sake of arriving at the point where white and black, yellow and brown will be coordinate members of the same society and state—a result which does not preclude some differential functions, interests, and roles. Should both sides refuse to attend to the demands of Natural Law, each will miss some of the truth and value which it now lacks, for these are now

possessed by the other. There will then be nothing left but bitter and remorseless struggle, veiled and nonviolent in form though it may be.

Positive and social law offer supplementary means for preserving the past in the process of attaining a better future, in the United States and in the world at large. The decisions of the Supreme Court define the kind of future we are to have as law-abiding men; the Southern community exhibits the values of a past which it intends to preserve. The more the positive law enforcement takes account of that past, and the more the social law of the South attends to the need to reach the prescribed future, the more readily will both change in stress, the more will they mute and transform their opposition into collaboration. They will then become what they should be—correlative enterprises for producing and preserving a socially sensitive state. The Southern way of life and the legal order should both modify their claims not in terms or because of any pressure exerted by the other, but because each can be seen to have value from the very same objective position from which the other can be seen to have value.

Each side is faced with the prospect of peace and prosperity. Men in every society and state in fact aim at such a prospect by virtue of their very being as public men. Only a few of them ever get to the stage of being conscious of it; fewer still make it their chosen objective; and still fewer act to realize it, or succeed

in realizing it to any great degree. And few know that beyond it is a common human good, the good of mankind at which men, as apart from the societies and states and their limitative needs and objectives, inevitably aim.

The common human good is the natural objective of public men, so far as they are not confined in aim by their particular states. It demands that justice be done to all man's powers; that mankind be fulfilled; that to peace and prosperity, to security and organization, be added truth and ease of spirit, adventure and self-realization. Men, while in a state, can pursue it only so far as they attend not only to what must be done in that state, but also to what ought to be enjoyed apart from the state. If it can be realized, there will be a world community where the arts and sciences flourish, and every man is fellow to every other. It is too much to claim and perhaps even too much to hope that mankind will ever find a way into such a Garden of Eden. But it is not much to claim and hope that men will guide themselves by it.

Like the social good, the common human good makes some set of laws of nature normative at a given time. But since it relates to men, not as in social and political enclaves, but as parts of one mankind, it defines not a Natural Law which ought to govern men in societies and states, but a law beyond this. That law ought to govern mankind. It transcends and measures social, positive, and Natural Law, and the societies and states

to which these are germane. When social, positive, and Natural Law conflict, as they sometimes do, it is to this one must turn for the neutral, comprehensive principle in terms of which the conflict can be justly adjudicated.

Social law epitomizes sound and established practice, defining the decent habits which should govern men in public. Positive law is a set of effective pronouncements defining the things men may and may not do in public. Natural Law states the desirable relation which should hold between social and political men as they now are and the social good they seek to attain. The law beyond these, the Law of Civilization, states the desirable relation which should hold between all public men and the common human good they ought to realize. In different ways these different kinds of law provide a measure of what is important and offer guides for the public determination of what should be done and avoided. In different ways they take account of the fact that men alienate their native rights for the sake of satisfying them more effectively. But it is only the Law of Civilization which applies to all public men. Only it offers an adequate measure of the degree of public satisfaction which is to be accorded to all men's essential parts and their rights. Only it is qualified to dictate how far societies and states are to yield to one another. To realize it requires self-denial and wisdom on the part of both social practice and legal demands. But at this juncture in the

history of the world such self-denial and root wisdom are beyond reasonable expectation. The only hope we now have of adjudicating social practice and legal demands lies in our ability to provide force neutral to both society and state to back the demands of Natural Law.

In a sense we have already attained to the stage of history where positive and social law modify one another. Our positive laws are forged in the light of prevailing social customs, and are not much out of gear with them. Our social customs are affected by the prevailing laws and rarely constitute a denial or defiance of them. The Southern way of life today is a life under positive law. The South is now torn because obedience to an instance of that positive law seems to go counter to the South's stabilized ways. On the other hand the Supreme Court decision to which the South objects is keyed not only to the Northern way of life or what the North would like it to be; it is based on an acknowledgment of the prevailing social temper of the South, as is evident from the fact that it explicitly provides for a gradual application of what it has acknowledged to be the law of the land. No strict legalist could allow for such toleration. It is defensible, though, from the position of the Law of Civilization. It is to be hoped that it will be followed by similar decisions until the United States becomes converted from a mere state into a full-blown unit of Civilization, governed by the Law of Civilization.

One should never be content with a system which comprised only positive and social law. These could conceivably be in harmony and still be corrupt, perverse, promoting injury and chaos. Or, where they were in harmony under the aegis of Natural Law, they might fail to comprehend enough of public man. Natural Law is law for men as they now are; it has a different content in different states; it tells men what they ought to do in order to move from their present stage to the social good. It is satisfied if men work to attain justice and peace. But it does not demand of them that they encourage the arts and sciences. It does not ask them to live as full a life in public as possible, so far as this is consistent with their being full men in private. We must look beyond the Natural Law to the Law of Civilization for principles which are pertinent to all men, regardless of what state or society they may be in. We today are not altogether under the sway of such principles. And so far as we fail to exhibit them fully, we live not in that Civilization which embraces all men, but in a fragmentary realization of this—in a unit of civilization or *Culture*.

## 8. *Units of Civilization*

### 1. THE ELEMENTS OF A CULTURE

WESTERN MEN rather precipitately speak of the world in which they engage in interlocked economic and political activities as though it were a full-fledged civilization. They suppose that there could be civilizations which held themselves over against one another, and which might even struggle with one another for survival. One hears of a contemporary Middle East, an Arabic, and an Oriental civilization, of a Babylonian, Greek, Roman, and Christian one. And there are those who speak not only of a Greek but of a Hellenistic civilization, of an early and late Roman, of a medieval and a reformational Christian civilization, and so on. Toynbee goes even further. Piecing together odd bits of historic lore, he makes "civilizations" which no one before or since has taken to be unified or civilized.

The term "civilization" has no well-established mean-

ing. By and large it designates a whole which is larger than a society, state, or nation, and which allows for the presence of many different languages, customs, laws, and habits. I shall use the term to refer to a realm which includes all mankind so far as it is engaged in peaceful and liberal activities, among which are the pursuit of the arts and the sciences. Such a civilization has never been, and is not now, a reality. But an understanding of its value enables one to see that what historians have termed civilizations are at best fragments, units, or anticipations of it, limited in multiple ways. To avoid confounding the idea of civilization with that of a unit civilization it is sometimes desirable to use an alternative expression for the latter. "Culture" seems to be the best available.

Cultures, and the civilization whose nature they fragmentarily and sometimes oppositionally exhibit, have a characteristic end, norm, and membership—a mythos, ideology, and people, respectively. Cultures differ in type depending on which of these factors gives tone to the whole. The content of the tone of a type of culture is affected by men's habitual and reflective activities, their interests and purposes. There can therefore be a number of distinct cultures agreeing in tone but differing in content.

A mythos is an ideal which provides the men in a culture with direction and aim. Usually expressed in the form of fables, stories, and ceremonials centered about great figures and sometimes even divine beings,

it recapitulates the history of the activities of the past in the shape of a model for those who follow after. It offers a richer and more inclusive end for men than can be given by the social good. It is because men need much more than any social good could provide, it is because they are at once passionate and rational, emotional and stable, that they inevitably turn toward and adopt the mythos which their predecessors in the course of vital interplay produced and left behind them as a testimony of what promise and hope is open thereafter. The mythos stands outside the entire culture as its future, as its boundary in time, as that toward which all are directed by virtue of what they have done and the interests and stresses now characteristic of them. But like a social or political end, the mythos makes some set of laws of nature preferential, as the most appropriate means for taking men from the position they occupy to the place they ought to be.

A law of nature which a mythos makes preferential is an ideology. This provides a normative frame for the actions of men in the culture. It makes possible the evaluation of acts, no matter what their nature or intent, as so many different partial means serving to bring about the goods offered in the mythos. The ideology is embodied in the economics, the positive laws, the languages, customs, sports, arts, disciplines to which men submit, usually unknowingly, when they go about their daily tasks. Through their agency the ideology asks men to so act that the arts and sciences flourish.

Easily mistaken for Natural Law, it is nevertheless more inclusive, not being limited in range to the members of some one state or society, and being pertinent to means which promote more than justice and peace.

A mythos obligates the men in a culture to adopt the ideology. The men, as so obligated, constitute a people. These have a unity by virtue of that obligation. The people need not be conscious of the obligation to accept it or to live in consonance with it. Since that obligation is dictated, not by what is socially or politically needed or aimed at, but by the cultural mythos, the unity of the people transcends social and political boundaries.

A people is ideologically one by virtue of the fact that the mythos is adopted by it, and this in turn dictates the kind of ideology which that people must exhibit. A people has the ideology it ought to have, and none other; an ideology is the ideology of just the people which it characterizes. One can and one ought to, of course, point to a higher and more inclusive good than that of a mythos and thus to some norm superior and more inclusive than that characteristic of a culture. But this is possible only so far as one has left the particular people behind, to consider mankind as a single public whole, or because one has attended to goods outside the province of any public scheme.

A mythos, ideology, and people together exist in a given segment of history and geography. Because the mythos reflects the historic achievements and expres-

sions of a limited past, and because the ideology relates only particular men to the mythos, there can be many different cultures existing at the same time, as well as over the course of history. Often these merge with one another in time and across space. Each has strands that are continuous with those of successors; each puts stresses which are somewhat similar to those characteristic of neighbors. Nevertheless it is useful to distinguish three types, depending on whether it is the people, the ideology, or the mythos which gives the tone to the cultural whole they together constitute. No one of these three is ever completely dominant over the other two; no culture has a pure unqualified tone, given to it by the people, the ideology, or the mythos exclusively. But some cultures are more under the dominance of one of these components than of the others.

## 2. GREAT MEN

A culture embraces all the people. If built on castes or slavery it embraces all the castes, the slaves as well as the free. He who studies the highest caste or the masters alone will deal with but a subculture, and then not take account of what makes it possible, sustains it, and more or less subtly affects it for good or ill. Still it is the case that there are men in every culture who are more conspicuous than others, who set the pace for the others. These pace-setters are the culture's great

men; the rest may not follow them and may even deliberately reject them, but it is the great men who determine the focus of interest and activity of the rest. They represent the rest of the people sometimes because of their personalities, often because of their achievements, and always by virtue of the acceptance by the rest of their ways and values.

Great men offer an epitomization of a people. They are refined works of art, produced in the laboratory of culture. One need not suppose that they have special gifts or virtues; they might in fact be bad men, men whom it would be better not to have dominant. Such a judgment evidently is one made not inside but outside the context of the culture. So far as the culture is concerned, they are outstanding men who exhibit conspicuously (and often lead the rest to adopt) some particular way of living.

At least four distinct kinds of great men have given characteristic tones to Western cultures. There could be more, and there surely will be more when different facets of men are brought to the fore in the course of public living. One can perhaps isolate other types in history, and one can certainly supplement them by others occupying similar roles in the East, in primitive cultures, and in the distant past. But it is primarily the Hebrew prophet, the Greek hero, the Christian saint, and the secular inspirational leader who, until now, through thought, word, and act, have given the tone to distinct Western cultures. These are the most im-

portant in our history, and even in our present consciousness.

The Hebrew prophet was not a man necessarily distinguished in character, intelligence, background, or even in interest in things religious or divine. He was one who effectively spoke out and acted in the light of what he took to be the sudden commands of God. His prophecies were not predictions, precise and clear, but rather estimates of the historic effect of moral and religious failure on the part of the people. He spoke to the people in urgent terms, attempting to change their ways. The reactions he provoked, though not what he himself wanted or expressed, owed their nature in good part to him. His personality gave the tone to his culture; the rest of the people accepted or rejected him and thereby behaved in the terms he set.

A prophet could be more virtuous than the Hebrew prophets usually were. But it is characteristic of a prophet not to claim to be a man of much stature in his own right. The prophet is in principle a transmitter, a vehicle, one who is important not because of what he does, or is, or knows, but by virtue of the divine word he claims to transmit. There are those who speak of Christ as a prophet. But he is more than a prophet can be. Christ has exemplary virtue and speaks in part through his own acts and insight, and in his own right. Nor is Mohammed, though he termed himself a prophet, rightly described as one. He was primarily a leader and catalyst, combining these with the role of

prophet in such a way as to constitute a new type of man.

A hero is a man with conspicuous virtues, usually courage and resoluteness, which he exercises on behalf of the people. Like the prophet, he has been favored by the gods, but as an individual, not as a mediator or mouthpiece. The prophet sometimes does what he himself does not want to do; the hero acts out virtues which are his own, and which mark him off from all the rest. As is made evident in Homer, these virtues are consistent with the possession of regrettable vices. Homer's heroes are often childish, petulant, foolish, and jealous.

The Greek hero is a hero as it were by profession, and he sets the tone of his culture. There have been heroes since his time in other cultures, but these were momentary heroes or institutional ones, not heroes defining the culture in which they lived. Members of the military offer a good example of "institutional" heroes. They dedicate their lives to the service of the culture; they stress courage and resolution, but they keep their individual heroic impulses and activities in abeyance, and even subordinate them to the need to function as integral parts of a military organization. The military organization is a laboratory for the production of men capable of living and dying heroically, but the heroic act is taken to be a crisis occurrence, and the man who engages in it still remains subordinate to the organization. The Greek hero in contrast is an individual who

stands out from all the rest. He does not hesitate to jeopardize the fate of the whole to satisfy some personal demand or need. He is one with the very meaning of the culture, superior to and in a way inclusive of the others.

The saint, like the prophet, is a representative of God. Unlike the prophet he imitates in his thought and life the excellencies of the divine. He is a willing agent of God, a man who deliberately devotes himself to the exhibition of divine glories and intent, whereas the prophet is often a reluctant witness who may be caught in a frenzy and speak without understanding. And like the hero, the saint exemplifies basic virtues. But unlike the hero, he is not complex, a mixture of outstanding virtues and vices or failings. Rather, the saint is unified, organized, with a well-defined and constant focus which private desires are not allowed to blur or alter.

Neither the Greeks nor the Hebrews had saints. Socrates and Abraham were men of outstanding virtue and lived in the light of eternity, keeping themselves steadily on the path of rectitude. But they did not give the tone to their cultures; they lived in the culture, were admired and imitated by others, but did not set the pace, did not give a basic coloring to the people. On the other side, the new saints which the Catholic Church acknowledges every once in a while do not have the same significance in our culture as their predecessors had in theirs. They are saints as it were for

the Catholics, not saints for Western culture. They do not seem to set the tone even for such predominantly Catholic countries as Spain or Italy.

The characteristic great man of our times is the leader. A Gandhi or a Schweitzer points a people toward civilization. He defines the tone of the culture as that which is to be superseded by a civilized whole of which the culture is an anticipatory fragmentary case. The leader is something like a prophet in that he is a vehicle for the expression of some truth or value of importance for the people. He is something like a hero in that he exhibits courage to a greater degree than most. And, finally, he is like a saint in that he is self-sacrificing, exhibiting a high degree of purity in his own life. But he also shares some of the limitations of prophet, hero, and saint. He may have a poor grasp of what it is that he is communicating, may mix his virtues with vices, and be attached to some limited religion and religious practice. In root he offers a variant on a Moses or a Mohammed. Political leaders—a Hitler or a Churchill—are not leaders in this sense, but something like national heroes, exhibiting heroic powers and faults, but in a national setting and for national ends.

Inside a culture there are men who, though not great in the culture, are great for some segment of it. There are great men in war and great men in industry, great men in education and great men in politics. These subdivisions will have something like a mythos and ideology of their own, and the men in them will have some-

thing of the cast of a prophet, hero, saint, or leader, occupied with limited ends and subject to limited norms. Since there is no need that the subdivision repeat the stresses characteristic of the whole culture, the subdivisions can be dominated by one type of man and a culture by another. A culture dominated by saints could include an army whose great soldiers were primarily leaders of the culture, pointing the rest to values to be realized outside the area of the army and its concerns. Similarly, in a culture dominated by heroes there could be industries, music, churches, schools, and drama, whose great men were like prophets in that they made the rest alert to the permanent values of a world beyond.

### 3. SECULAR RELIGION

The people constitute the body of a culture; great men are epitomizations and representations of that body. They are better focused on the mythos, they are more effective in the use and embodiment of the ideology characteristic of the culture, than are others. The great men affect every institution and representative of the ideology by imposing their tone on them. This situation can be inverted. The ideology can dominate the culture, and the people and mythos as well. This occurs most conspicuously when the ideology takes the form of an institutional, cultural religion.

A cultural religion is not necessarily other-worldly in origin, interest, or inspiration. It may ask for no act of faith or worship. It may demand but minimal or token attention, submission, adoption, or activity. Its intent is to get men to attend to the highest values, values which are expressed in the mythology, and it becomes dominant so far as it affects the mythos and the people in the culture so that they function primarily as bearers and transmitters of its meaning and power.

In a cultural religion a prophetic figure will no longer speak against the religion which men in fact practice, but rather in support of it. He will assume the guise of an outstanding sage, priest, or rabbi who, in the name of God, will communicate the basic decisions and demands of the institutional religion. He will be that type of great man who does not set the tone of the culture, but instead serves to support and promote the tone which the religion has already set.

The primary role of the heroic type in a religion-dominated culture is to carry out the institutional demands with courage and resolution. Like the classical hero, he will be a man who may lack basic virtues, even virtues sanctioned and encouraged by the religion, but, like him, will in the end sacrifice himself for a good—expressed by the religion—greater than his own. A Savonarola is too much concerned with the evils of the world to be a genuine prophet, and too passionate and violent to be a genuine saint; he has the temper of a hero, but he is too much under the dominance of his cultural religion to be one fully.

The sainted type in a religion-dominated culture has a nature, roles, and values not necessarily in accord with those which an impersonal ethics or a different religion might endorse. The saints acknowledged by the Catholic Church today, primarily because of medical miracles performed by them or through their agency, often cut family ties rather radically, refuse to perform simple acts of hygiene, offend decency and ethics, sometimes are very unsocial, and usually are simple in thought and speech. They are, however, saints in a cultural religion—that which governs the daily life of most Latins. These saints transcend the personal interests of the hero and transmute the personality of the prophet to become men whose primary service is to illustrate the values of devotion, self-denial, etc., which the religion, as part of a culture, endorses.

In a religion-dominated culture there can also be a leader-type of man. He stands out from the rest, directing them toward goods which lie outside the province of the culture itself. But he is no less subject to the cultural religion than the others. The values to which he directs his fellow-man are values sanctioned by the religion. They lure men out of the ghetto of parochial concerns into a wider world, more inclusive, more ideal than the one they occupy, though one dominated by the same religion as before.

Each religion is complex, and inside almost any one it is possible to find demands, distinctions, claims, and values characteristic of the others. Yet there is little

doubt that the major religions give distinctive tonalities to distinctive cultures. These cultural religions may have an other-worldly ground; they may serve values and beings outside the culture. Without reference to that other-worldly side one will be unable to understand why the religion has some of the characteristics and appeal that it does. But reference need not be made to that other side so far as one is interested in the religion only as setting the tone of the culture.

Different religions define quite different cultures. The ancient Hebrews, though not as rigidly tied down to a blind obedience to clearly defined laws as Christian apologists have sometimes supposed them to be, nevertheless did stress the majesty and obligatoriness of divinely sanctioned laws. They made their culture, the people within it, and the mythos characteristic of it have submission to divine imperious regulations as the primary tone.

It has been said that the Jews are a nervous people. This is a cultural observation. It provoked the cultural reply, "No wonder, they have experienced two millennia of Christian love." The reply makes a double point. The culture dominated by Christianity has as its primary tone that of a love of God for man, man for God, and man for fellow-man, but this love is not free from strong tinctures of intolerance, brutality, and vindictiveness. It is a cultural, not a divine love. This is distinctive and powerful enough to make a promotion of equality, an organized charity, a concern for

peace primary stresses, affecting the people, their great men, and the mythos to which the religion relates them.\*

#### 4. GREEK, HEBREW AND CHRISTIAN

The theologies, cosmologies, and duties stressed by the Greek, Hebrew, and Christian are historically re-

\* Though it is not vital for the present purposes and presumed audience, some note should be taken of the religions of Islam, and of those of the Hindu and Buddhist.

Nothing is perhaps so revelatory of the modern stress on great men, on the one side, and of the cultural nature of a religion on the other, as the English use and the Arabic rejection of the term "Mohammedanism" to characterize the religion of Islam. "Mohammedanism" has primary reference to Mohammed. But the Muslims refuse to give him a primary religious place; they take themselves, and him as well, to be defined by and not to define the religion. That religion is centered about the idea of "Islam," "surrender or submission to the Will of Allah." "The Prophet," no less than the rest, is subservient to Allah.

When one turns from the West to the East, from the religions of the Hebrew, Christian, and Muslim to the religion of the Hindu with his stress on renunciation, or to that of the Buddhist, with his stress on compassion, one once again finds a people and a mythos affected by the tone set by the dominant religion of the culture. In these and in other cases we have cultures which, though widely differing from one another in vital respects, form a single class of religiously dominated cultures, contrasting with those dominated by great men, or those dominated by a mythos.

lated. To see this best, abstraction should be made from the dominant role they have in their respective cultures. Viewed in their purity, apart from their cultural status, they enable us to identify a little better the qualified forms they assumed in our own culture, and enable us to see the shape of the new culture that seems about to succeed our own.

A God for a Greek was finite. The Greek thought infinitude meant indefiniteness, imperfection—states below the dignity of anything divine. Only that could be perfect, thought he, which was fulfilled, self-sufficient, rounded out, sharply and clearly bounded from all else. To be worthy of the name of “God” it had to have a limited excellence, a distinctive, completed nature, with definite, well-demarcated abilities and tasks.

The Greek would have thought it absurd to say, with the Hebrew, that God was both perfect and infinite. These characterizations, he thought, excluded one another. Precisely because God was perfect, God could not conceivably be infinite. A God is perfect; if perfect, finite; and if finite, He must allow for the possibility of still other Gods. A finite God, for the Greek, leaves room for other Gods to be.

Many Gods lived in the Greek heavens, each with its own type of excellence. Sometimes these Gods worked in harmony, sometimes in opposition. Some were stronger, some more virtuous or more intelligent than the others. One of them stood out above the rest, because of his age and power. A more regal, sovereign,

commanding being than the others, he was still no less finite, no less bounded and limited than they. Zeus was only one God among many, superior in rank and insistence, not necessarily in worth or right, to the remainder of the pantheon.

Starting from the very premise accepted by the Greek, the Hebrew drew the opposite conclusion. For him, too, God was perfect. But perfection, he said, was incompatible with finitude. To be a God was to be infinite, and if there are any other beings in the universe, they must then be finite and therefore not divine. Not only are there not many Gods; there could not possibly be more than one.

We do not know how long it took for men to become accustomed to the Hebrew argument that God's infinitude followed from His perfection, and that His singularity followed from His infinitude. We know only that this was one of mankind's major revolutions. With the acknowledgment of God's infinitude and consequent singularity, Western mankind took one of the most astonishing somersaults ever successfully performed in the history of thought. Thereafter, until recent times, no one whom the Greeks would call a God would be called a God by other men. Greek theology, from then on, was thought by all to be nothing more or less than Greek mythology.

For the Greek, creation was not possible, not required, and not desirable.

It was not possible, for the distance from nothing to

something which creation must traverse is beyond the power of any finite being, divine or otherwise, to master. The idea of a creation apparently never entered his mind, being effectively blocked by his concept of a finite God.

Nor is creation required in a Greek account. The divine finitude allows for the uncreated existence not only of many Gods but of many other types of being. It was possible to say with Plato, if one wished, that due to a God there were finite things in the world, but then it was necessary to say with him as well that to make those things He had to utilize an uncreated realm of forms and an uncreated stuff. It was simpler and more orthodox to hold with Aristotle that the existence of things owed nothing at all to the Gods, that all were well formed in and by nature, needing no divinity to make them be. Whichever one of these main roads one took, one started from material which was not dependent on God for its being, for its power, or for its virtues.

Nor did the Greeks think that a creation was desirable. It was better, they thought, for a thing to be sealed off, to be complete in its own terms and domain, than to partake of the nature of another, no matter how superior or excellent. The Greek wanted the Gods to leave him alone; he felt that he was arrogant, that he was subject to the terrible vice of *hubris*, if he tried to look beyond the horizon of man for his meaning or value. Man, he thought, had a proper place

in nature; it was wrong for him to step out of it, even if it was in the direction of the heavens. *Hubris* was but the inverse of bestiality, the misconception and the practice of the belief that man was not intrinsically the highest of beings in nature. We disgrace ourselves, thought the Greeks, no less by being arrogant than we do by being bestial, for in either way we tear man out of his proper place, disordering the orderly and excellent scheme in which he lives.

For the Hebrew, in contrast, creation was at once desirable, required, and possible. He thought it was good for God to create, for in this way the goodness, the power, the excellence of God was multiplied. The good can be shared without being diminished; in giving of Himself, God, without reducing Himself, makes more good be. Creation was also required, he thought, since the universe in itself had no capacity to be or reason for being. God's infinitude meant that outside Him there was nothing substantial, nothing concrete, nothing real in and of itself. This universe of ours could not be anything but radically contingent; whatever reasons there were for its presence had to be found outside, not inside it. The universe had to be created to be at all. And it was possible to create it, for God had infinite power, a power more than adequate to bring about a universe limited in range and nature.

God, the Hebrew thought, endowed the universe with a substance of its own, granted it independence, allowed it a history in which real, important events

took place. That universe was not and could not be self-sufficient, for self-sufficiency was one with infinitude. It was a universe which dwelt apart from God only because He permitted it. Every thing in it had to turn toward God to be itself most truly, for He was the infinite source of eternal light which made it possible for their light to shine as it should. In such a scheme Man had his special, privileged place which it would be disastrous for him to leave, but this place was his only because it had been divinely assigned, not because of the way in which the universe was structured. Man's natural rights were all supernaturally bestowed.

The Greek Gods, when well-behaved, dwelt in their heavens. Only when those Gods were disloyal or perverse did they concern themselves with men. The God of the Hebrews also had a heaven of His own, where He lived with His own thoughts through eternity. But He looked down and took heed of what men did. He did not merely observe them; he worked with them. He encouraged and threatened, punished and rewarded them at different times, promising them the greatest of glories would they but listen, repent, and reform. He was no bitter Prometheus petulantly violating a code, but a Father generous beyond belief, promising the harassed Hebrew a future better and of longer duration than any past he knew. Some day there would come a Messiah, He told them, an anointed man of

God who would lead God's chosen people through the wilderness of daily struggle to the Jerusalem of perpetual peace. Where the Greeks had a future which repeated what already had been, the Hebrews had a future so new and magnificent that they could not make its nature clear even to themselves. The future of the Greeks had arrived, many times before; they had nothing new to look forward to. The Hebrews have the same future still. Their Messiah is yet to come.

Both Greek and Hebrew had great respect for law. Each took as central what the other did not consider at all. The Greek thought of law as a principle of order, an agency for giving unity and meaning to a chaos of singular events. It was a principle of harmony, political in import, an artist's ideal applied to men engaged in public work. Law for the Hebrew was quite different. It was a command laid down by God. It spoke to him as an individual, though as bearing on the fate of all Israel. The law served the Greek as a measure of his public worth; the Hebrew instead saw it as a divinely grounded command, telling him what was right and what was wrong, regardless of the practices of men or the needs of a state. One could conform to the Greek law; the Hebrew law had to be embodied, lived through. The one made heroes possible, the other needed prophets. The one allowed Greece to conceive of itself as a model for all nations, the other made the Hebrews take themselves to be a dangerous mountain

top at which God's ark came permanently to rest. The one was primarily aesthetic, the other moral in nature, in spirit, and in import.

Both the Greek and the Hebrew were in the grip of a strong feeling of obligation. There was an ought-to-be which was not yet, and which it was their duty to make real, the one as a public agent, the other as a moral man. Failure to do what they ought, both felt, deserved punishment—severe, unremitting, resolute—for nothing less than eternal rightness, the control by the good and the just, was at stake.

The Greek thought of punishment as the inevitable but right consequence of a misconception of man's proper place and function. For a Greek a wrong disrupted the universe, and the Fates had to set it right. If he tried to be more or less than a man, the Fates took from him all that made his life worth while. He might have done the wrong inadvertently or deliberately. Whatever the reason, he thereby automatically brought upon himself the brutal but just punishment of being denied human goods, since these are precisely what he in his action disowned.

Instead of holding with the Greek that a genuine freedom for man precludes a submission to a God, the Hebrew insists that it requires such submission. For him, punishment is the consequence of an effort, not to redress a disturbed balance, but to reinsist on the rights of a supreme command. For him, there is no equilibrium that is upset, but a law that is denied. He is

punished not for inadvertent wrongs, but for an avoidable neglect of a truth which should prevail. His punishment is not an attack, a matching of one wrong by another, but a recovery, the subjugation of man to what ought-to-be.

The Greek made much of failure through inadvertence; the Hebrew stressed the fact of unjustifiable neglect. Rewards, neither thought, were rightly his. All rewards for both were blessings, undeserved bounties granted at unpredictable times and in surprising ways by a beneficent nature or a kindly God. Both worked under a burden of public or religious duty. The one took whatever joy or good came his way to be a sign of the beautiful goodness of things; the other took it as a sign of the mercy of the unspeakable Infinitude which made the finite be. And their rewards were different. Where the Greek could hope only for happiness, the Hebrew saw a blessedness, a joy transcending self but not necessarily located outside this world.

We today have left the Greek pantheon of finite Gods far behind. No longer do we think of the universe or of men as sharply separated off from a heaven. We do not view laws as designed primarily to harmonize rather than to correct or ennoble. We think it unjust to punish men severely for errors which are inadvertent or unavoidable. Balance, harmony, order, heroes, the city-state are not the foci of our culture. We are more historic-minded than the Greeks; we people the past with fallible persons and not with irresistible giants. We

are more optimistic than they were; the future for us is somewhat better than any our fathers could have had. We have been affected by the Hebrews thoroughly and indelibly. But our culture is not primarily a Hebraic one. It is in large part Christian, something less and something more than the Hebrews would have had it be.

The Hebrew who clings to the faith of his fathers holds tight to the view that God is One, that He created the universe, that the Messiah has not yet come, that all finitude is overarched by a divinely given moral law, and that all goods are blessings, to be met with thanksgiving. The Christian accepts all the items of this creed, but not without giving them a subtle, important, radical twist.

There is only one divine substance, thinks the Christian. Here he is in agreement with the Hebrew. But that substance, he adds, encompasses three distinct, divine persons. God is one but also many: that is the paradox and mystery on which he, with few exceptions, rests his faith. For him God is a Father dwelling in awful isolation above the strife of mundane things, a very Zeus; He is also a Son who lives as a man among men, a true David; and, without destroying His perfect unity, He is also a Holy Spirit, relentlessly working on behalf of a moral order in this world—Greek force and Hebrew ethos in one. He is a God who not only judges but suffers and dies, who is rejected and yet persists in working in history and in men's hearts to bring

about the morality that ought to prevail. More knowable than the Hebrew God, the Christian God is more protean. It becomes difficult to focus on Him, and Christianity inevitably proliferates into a multiplicity of sects occupied primarily with reaching only some one of His aspects from a special point of view. The Christian God is an infinitude much richer than the Hebrew's, but He is not so evidently a unit, with a unitary meaning, locus, and career.

The Christian God creates. But instead of, with the God of the Hebrews, creating a self-contained universe, He produces one which forever remains open with respect to Him. It is not sealed off, granted an independent nature, history, and function of its own, into which God enters only in the role of beneficent friend or correcting guide. It is created, thinks the Christian, as insufficient and thus as still needing God even in order to continue to be. The Nothing out of which the universe was created seems to him to have some force all its own; what God created is perpetually pulled downward into the Nothingness out of which it was made. God's infinite power and constant interest are needed if the cosmos is to remain in existence two moments together. Creation is thus for the Christian somewhat less powerful than it was for the Hebrew. Where the one has an act performed in the distant past, giving to the created universe an independent status, the other has a perpetual act whose product vanishes when separated from the activity which brings it

about. In compensation, though, the Christian conceives of creation as being much more personal in its bearing than the Hebrew thinks it is. He conceives of God as creating not only a universe, or the original human begetters of the bodies of the rest of mankind, but each and every individual soul.

The Christian takes creation to be possible, necessary, and desirable for each particular man as well as for the cosmos as a whole. As a consequence, he denies that man has a proper place in the scheme of things, either naturally as did the Greek, or by endowment as did the Hebrew. At best man can be said to have only an assigned position, a momentary perch from which God could let him slip, at any moment, into the black abyss from which he came. From the beginning of his life to the end each man is and has to be supernaturally sustained. Room for freedom is allowed to each, but only to do wrong, for men are independent of God only in being able to manifest themselves in the form of evil, the nothingness which they are as apart from God. Whatever good works men can perform are divinely produced or induced; whatever evils they bring about in intent or in fact come from the emptiness toward which they are inevitably reduced when they try to stand alone. Man is a special creation of God without an existence all his own. Never before had man been raised so high and put so low.

The Christian gave the Western world a new idea of man. This was not, though, the news he sought to bring.

His good news, the heart of his gospel, was that the Messiah had arrived. This news was unintelligible to the Greek, who never expected one, and it was not accepted by the Hebrew, who, to this day, insists that the Messiah has not yet come.

Our heretics and atheists today are neither Greek nor Hebrew, but rather Christians upside down. They understand full well what it means to call Jesus the Christ, the anointed one, the hope of mankind; they do not hold with the Hebrew that Christianity is grounded on a mistaken identity and that some day the Messiah will surely come. They understand the claim the Christians make but reckon in their own way with the events on which the claim is based. They insist that these facts add up to something less than God. They keep Christ near the center of their thoughts, as neither Hebrew nor Greek ever does, if only to have something to deny. They are non-Christians or anti-Christians inside Christianity.

The Christian Messiah is a paradox and a mystery, incomprehensible to one without true faith. He is fully God and fully man, living on earth while yet in heaven. In time, coming to be and passing away, he is nevertheless eternal and unaltered, untouched by time. Despised and punished, suffering and forsaken, he is at the same time the master of all, the being all need, an incorruptible tower of strength, the savior of mankind.

The Hebrew expected a Messiah who was both much less and much more than the Christ of whom the Chris-

tians speak. They awaited a man and not a God. They expected him to lead all Israel into a golden age here on earth, and not merely to point the way to heaven. They looked for a human descendant of David's, not for a God who would come through David's door, and end, with life only half done, upon a cross. The Messiah they could see might die, but never if he were God. And whether God or man, it was evident to them that Jesus did much less than a Messiah must. He should have fulfilled the law, proved the prophets, made Israel a nation above nations, the crown of all creation. He was for them less than even the lesser prophets since he himself failed to live up to the laws which are binding on all. And if he came to save all mankind, all men should now be saved, for God is infinite, whose will cannot be gainsaid. Yet everything seems to be just as it had been before. Even those who have been transformed by the thought of Christ await still another coming, revealing by their expectation that they do not believe that he has as yet, as a Messiah should, set the world aright. The Christian Messiah failed to improve Israel's fortunes, failed to wipe out man's sin, failed to change the heart of man. To expect him to do all these was to expect him to be much grander than the Hebrew thought the Messiah need be; but to allow him to fail in all these was to grant that God or his anointed one was much less powerful than the infinite should be.

There are ups and downs in the history of the Greeks, but no radical turning-points. The Hebrews ex-

pected that there would be one eventually. The Christians thought that there had to be two—one which had already occurred, the first coming of the Christ, the living paradox and mystery, and another, the day of the last judgment, which was even more distant and cataclysmic than the Hebrews believed possible. The Christians had a past even more brilliant than the Greeks; but it was not without its element of bitter unequalled tragedy; they had a future even more striking than that of the Hebrews, but it was limited in nature by the previous coming of Christ and man's activities thereafter. The Hebrews looked primarily to the future, while the Greeks remained children of the present. The Christian instead turned to the past, but a past which in a sense contained the meaning of both present and future. His was a world at once richer than that of the Hebrew because it pivoted about an all-important, actual event in history; his world was poorer too, for that all-important event cast a shadow on the future, depriving it of its full Hebraic novelty.

With the Greek, the Christian acknowledges a Natural Law and natural rights, and with the Hebrew he affirms that all law and right is made possible through the beneficent act of God. He reconciles the two in the idea of a nature supernaturally sustained. There are natural laws and rights, he thinks, because they are and must be grounded in God. In his world only the hero is prophet, only the prophet is hero. And in the last resort, he affirms that Jesus Christ alone is the true prophetic

hero, a God-man who perfectly conforms to an ideal Natural Law while expressing an other-worldly spirit. No man or nation can, he thinks, serve as a model for the rest, or be treated as a primary dwelling-place of God. Jesus Christ alone has paradoxically and mysteriously a nature and a supernature, is God and man in one.

More deterministic than the Hebrew, the Christian thinks of each man as inescapably open to a divine judgment; less worldly than the Hebrew, he believes also that a man can be raised to a state of supernatural guiltlessness—translated into heaven if he so wishes. Less rational than the Greek, less this-worldly than the Hebrew, his theory of punishment, like his theory of God, creation, Messiah, and law, is finally palatable only to one who believes.

All men, thinks the Christian, deserve punishment, since all of them partake, through inheritance, of the original, infinite, indefensible sin of Adam. They deserve an eternal damnation, though they themselves are not responsible for being born and thus for the sin they received from Adam. They are sinners by inheritance, possessing a corrupted nature which can be purified only in the fires of hell. Still they can, through God's grace, free themselves from this corruption, take on a new nature, become men reborn, if only they be willing. Though all men deserve punishment, only those will in fact be punished who have deliberately refused to

escape from that scheme of things in which punishment is inevitable.

Only a slight acquaintance with the literature and history of the last two thousand years is necessary for one who seeks to find sharp and striking exceptions to what has here been taken as expressing the essence of the Greek, Hebraic, and Christian views. Indeed, any attempt to isolate and formulate them adequately is bound to fail, the victim of inexpugnable ignorance, unsuspected prejudice, and unwitting distortion. No one of these outlooks is neatly divided off in space or time from all others; each evidences the influence of cultures which preceded it and which exist alongside it. No one is single-tempered; no one is absolutely coherent; no one has a definite beginning and a definite well-marked end. Nor are all the thoughts of a time, in which one of these outlooks is dominant, in perfect, clear agreement. There are heretics and disbelievers, iconoclasts and pioneers, short-lived trends and abortive movements in every culture. They are just as much a part of their time as longer lasting and accepted men or doctrines.

Our culture is more Christian than it is Greek or Hebrew, but it is not Christian in the sense in which previous centuries were. Modern science, in part through indifference, in part through the formulation of new concepts, and surely because of its successes in theory and technology, has promoted new interests and

attitudes, turned men's minds from the topics which interested and environed their fathers. Nations, too, have followed their own bent, and partly by force and partly by propaganda and education have begun the orientation of man's thought from Rome and Geneva toward Washington and Moscow. Christianity, as a cultural religion, is today more a faded hope than finished fact; it is a thing of patches and compromise, of indecision and wide gaps. The view it nourishes may well outlast this scientifically and politically tinged epoch, as it has outlasted the world of classical Roman life and law. But whether it does or not, our culture, to be intellectually viable and eventually therefore powerful enough to sustain a people, must be radically altered in idea.

Man is no Greek child of Fate, punished for what he could not avoid. He is no pre-bound Hebrew, punished for a failure to fulfill divinely imposed tasks. Nor is he a sin-drenched Christian, helpless before the juggernaut of damnation, unless somehow lifted to an incorruptible sphere. He is free to do what he naturally ought, and deserves punishment only if he does not live up to obligations he freely assumed in accepting the fact that he was a man.

The Greek knew that no limits could rightly be put on the range of man's mind; the Hebrew knew that nothing less than perfect fulfillment of the ideal could ever finally satisfy; the Christian knew that man was free to do himself irremediable harm. But none of them

knew, as we know today, that man is free to do great good on his own. The culture into which ours is now changing will apparently be dominated by a religion in which this new knowledge will have a leading role. But before it can attain this it must and ought to be sanctioned by an appropriate mythos.

## 5. CULTURAL SYMBOLS

A mythos provides a standard for a culture, dictating the proper ideology which the people ought to use. Unlike the social good, which is not only indeterminate but without much richness and therefore can be said to ground little more than such vague generalities as the desirability of justice and harmony, the standard offered by a mythos has a vivid content derived from the past. That is why it is at once palpable, attractive, and available only to those who come out and continue to hold on to that past.

A people exhibits its mythos in dance and song, in folklore and story. When the mythos gives the tone to the culture these activities serve as symbols of achievement, which men keep before them as they engage in what otherwise would be quite disparate and transient, unrelated activities. It is through these symbols that the culture is dominated by a mythos which in fact is not fully realized in it.

Every culture has symbols of what is excellent for it,

thereby defining the proper tasks of the people. The symbols, by giving the tone to the culture, turn the religion and the people into symbol-bearers and agents. Were it the case, as some maintain, that the American mythos is primarily concerned with success and bigness, and that larger and larger, and more and more expensive cars, buildings, planes, businesses are good symbols of this, it should be the case that these symbols also govern our religions, as well as any men recognized to be men of—revelatory word—"magnitude." These symbols do seem at times to have such a role. But as I have already suggested, America has a different mythos. Its culture is primarily leader-dominated, and signs of success and bigness (which are surely present) serve as carriers and agents for those leaders, rather than the reverse. To be sure, there is no single pattern to be found at every place and at every moment. Still, the dependence of the symbols on the leaders seems more typical rather than the reverse.

To find a culture where the mythos dominates, it is best to turn to one where the primary stress is on moral values. Confucian China is almost a paradigmatic case, particularly since the religion and outstanding men there are almost entirely submerged in the role of carriers of the symbols of correct attitudes, behaviors, and ideals. A case for a mythos-dominated culture could also be made out for that part of Western culture which comprises England, Germany, and France. Here the religions are quite clearly under the influence of a sym-

bolism having a primarily ethical cast. Fair play, decency, cleanliness, respect for privacy, respectability seem to be primary, with the religion serving as an instrument whose main task is to promote them. It is not altogether clear, however, that the dominant men in the English-Germanic-French culture are also under the influence of this symbolism. They seem at times to be primarily leaders, directed toward other ends than those expressed in the symbolism. If so, that culture will represent a mixed case where great men and symbols together set the tone of the culture, using religion as an agent or carrier of their joint meaning.

Consonant with the distinctions already made, it is helpful to divide the types of mythos and thus cultural symbols into four classes. Some relate to individual excellence, e.g., the elder in Chinese culture; others to the productivity and vitality of the culture itself, e.g., the machine in the late nineteenth-century England and America; a third set refers to an ideal state of affairs, e.g., the classless society in Russia; finally there are those which have a sacramental role, e.g., that of a chosen people. These various symbols can be employed by diverse religions and embodied in different types of dominant men. None of them is altogether appropriate for us today. One of our current problems in fact is that of forging a new and effective mythos which will enable our successors to focus on the importance of creativity in every dimension of existence. Made dominant, that mythos will turn our leaders and religions into vehicles

and occasions for the achievement of excellence everywhere. Not until our activities succeed in bringing before the attention of our successors the fundamental drives and values which are characteristic of ourselves will we be able to lure our successors to continue and to improve what we have done. The continuity of our culture depends on the production by us of a symbol reflecting our values and dominating those who come after.

## 6. BEYOND CULTURE

Mythos, ideology, and people provide boundaries for cultures. From one point of view they are integral to specific cultures, differing in content and nature according to the cultures of which they are a part, and providing the symbols, religions, and men descriptive of the culture. From another point of view mythos, ideology, and people stand outside the culture, remaining constant despite basic changes in it, and providing it with appropriate norms.

Only by having recourse to exterior norms can one characterize a culture as good or bad. The characterization can be pertinent to just that culture or pertinent to any culture. It must be the latter if cultures are to be evaluated in relation to one another.

We ought to and do compare cultures. We ought to and do make use of standards which are neutral but

relevant to all. The great man, religious truth, and the noble symbol, when defined in independence of a given culture, can function as standards permitting the objective comparison of cultures. They stand in between those standards which are pertinent to only one culture and those which belong to some transcendent realm, having no necessary cultural bearing.

A culture which produces the greatest number of great men—be they heroes, prophets, saints, or leaders—is better than others because more creative, more fruitful, more able to do what ought to be done. From this point of view different cultures are so many different experimental laboratories for the production of excellent men. The best of cultures will be the one which produces the greatest number of men who have the most virtues brought to the highest pitch. In terms of such a standard different types of great men and cultures can be graded, and the cultures inside a given grade can be evaluated.

An alternative neutral standard is that expressed in the idea of a pure religion or religious truth. A religion can be said to be pure so far as what it says not only is free from subjugation to political, social, and cultural conditions but reports the nature and intent of God as sustaining and enhancing whatever values men may have achieved. Different cultural religions and their cultures can then be said to differ in value so far as they exhibit the standard with more or less adequacy; the various religions and cultures will be graded in terms

of the degree of support they offer to the idea of the truth of pure religion. That culture which gives the greatest support to the purest religion will be judged to be superior to others in the dimension of spirituality, since it, more than the others, will reflect the light of eternal truths and values as germane to men in this space-time world.

The third alternative neutral standard, making possible a comparison of cultures, is that provided by the noble symbol, a symbol which functions as an ideal of the richest possible kind of existence that can be lived in a community. One culture will be superior to another to the degree that it is guided by such a symbol. The best of cultures will be that one which gives maximum promise to the most inclusive of symbols; it will be a culture which more than any other has the capacity to preserve past achievements in the shape of an end appropriate to every facet of man's promise.

No one of these three standards is final. Their consideration leaves one faced with the question whether or not it is good to have outstanding men, pure religions, and noble symbols. We assume, as a rule, that these are splendid products. But that they are so ought to be shown. They are, to be sure, superior to standards which are derived from one culture and arbitrarily imposed on others. Their neutrality permits a comparison of cultures with one another in terms expressive of values to be found in all. However, there is no way, apart from the use of a standard overarching all three

standards, of determining which one of them is to be preferred in a given situation, or how one is to compare cultures measured by one of these standards with those measured by the others.

Beyond the standards of great men, pure religion, and noble symbols stands another, offering a measure of their comparative excellence. It is a neutral "ought-to-be" which the different cultures should realize through the aid of their great men, religions, and symbols. The standards which the men, religions, and symbols set are in fact only standards for the use of effective instruments for the promotion of a good greater than they. That good is the good of public man, a good relevant to all men no matter what their culture, role, or place. This good alone provides a single measure for all cultures.

The good for all men is an Ideal which has hardly any detailed content. We acknowledge it whenever we refer beyond man, as we know him to be in fact, to man as he ought to be. We are guided by it whenever we judge that other men in other places are human too, on a footing with us in dignity, right, and basic aim. We rarely attend to it, however, but turn instead to the normative law, the Law of Civilization, which the common human good elicits out of laws of nature. That law links men as they are to the good they ought to realize. Conformity to it by all would bring about a Civilization made up of men who are severally and together as complete as public beings can be.

## 9. *Toward Civilization*

### 1. THE PUBLIC WORLD TODAY

THE DIALECTIC METHOD here employed made possible the confrontation of a sequence of more and more adequate and comprehensive ways in which men could exist together. It made no claim to repeat or report history. Instead, through the use of idealized, purified forms of the pre-conditions of present states of affairs, it constructed paradigms of societies, states, and cultures and brought us to the envisagement of an ideal Civilization. The sequence which the dialectic presented has a kind of factual counterpart in the shape of a series of concentric circles of public existence, which men now occupy. The major distinctions characteristic of the one have an answer in the other.

There are, however, important differences between the state of affairs presented by the dialectic and those which prevail as a matter of fact. The dialectical stages

could have a temporal order and are in an order of excellence, whereas men occupy all of the circles at the same time, no one of which has a preferential status. The dialectical stages offer pure cases of different kinds of grouping important for man; the actual groups men participate in are not so well defined and are not entirely without influence on one another. And whereas the dialectical method was sustained by a single drive toward completion, the various circles which men in fact occupy came about as a result of many different causes.

Today men live in cultures, and in societies and states. And if account be taken of the family and the existence of friends and lovers as well, they must be said to occupy at least two more realms. Each of these has a characteristic binding tie by virtue of which the men in it can be said to belong together. Starting at the outermost, and viewing the different types of groups in their most public and least intensive forms, we can distinguish four different binding ties: (a) shared values, (b) dominant order, (c) coordinate activity, and (d) mutual involvement. Each deserves some discussion.

(a) At present the widest public group is that embracing a culture. As members of one culture we have so far cut ourselves off from the rest of mankind; we share values and a history which others do not have and which we express in the form of characteristic ceremonies, work, interests, and beliefs. We can be said

to share the same values with the rest of the men in the culture, just so far as all of us are responsive to certain threats and opportunities which are of vital importance to the welfare of that culture. There need be no awareness as to just what the culture is aiming at, no consciousness of what the rest of men may be doing. The members of a culture are bound together just by being responsive to various cues in such a way as to conserve the achievements of the culture.

(b) Narrower than the public domain defined by a culture is that which is defined by a stable order, expressed in the form of rules governing the ways in which men are expected to act with respect to one another and the things about them. These rules are supported by actual or threatened force, and have the form either of effective habits enabling men to constitute a society, or of positive laws which so control and interrelate them that they constitute the body of a state. Through the agency of the habits and laws, men become so closely bound that some thinkers are tempted to affirm that they then make up a single organism—a man writ large, according to Plato, or a sea monster, a Leviathan, as Hobbes called it. But one need go no further than the evident affirmation that habits and laws are agencies for the solidification of men into a more or less stable order. Such agencies define the tasks, roles, and requirements to which various men are subject and open up various avenues in which men can, without interference and sometimes with help, engage

in various tasks, assumed to be of benefit or at least not to be harmful to the rest.

A man is accountable for acts which go counter to, or are thought to jeopardize, the public order of his society or state. Such accountability is to be sharply distinguished from responsibility. Accountability is a socio-legal idea; responsibility is ethical. The one can exist without the other. A man can be held accountable for acts for which he has no responsibility. We are accountable for negligence, for workmen's compensation, for emergency taxes, for some of the errors of our servants; yet we may not, in any of these cases, be at all responsible for what occurred. On the other hand, we can at times be responsible for that for which we are not accountable. We are ethically but not publicly at fault for bad intentions which are not expressed in action, for lies which do not have public consequences, for bad manners, for the typical selfishness that we express in the bosom of our families, and so on. The habitual and legal order provides men with a binding tie because it defines their accountability and makes them so act that they reduce to a minimum their oppositions to that order.

(c) Inside a society and state there are many subdivisions. A primary one is that of the family. Its members form a single body, held together by an intimate way of being interdependent. The members of larger groups usually are not as close to one another as they are in the family, in good part because the members of

the family live in greater intimacy and expose themselves to one another more completely. Only in the family does one act with others almost as though each were entirely alone. Much of what would be outside the range of public scrutiny, knowledge, right, or interest is here available and sometimes used. In the larger, more public units there is an enforced set of rules which subjects the members and directs them, making the members as a consequence more and more impersonal in their relations to one another. The members of a family, in contrast, make the family by their interplay, having no judge or guide. The area in which they act tends to be closed to the outside. The world outside might put limits on what is done; there may be religious injunctions and customary familial patterns, but none of these provides the family with its characteristic tie.

Plato, a bachelor, thought it both desirable and possible to eliminate the family. Aristotle, a married man with children, took him to task for the idea. The family Aristotle recognized, answered to basic psychological needs, and made for a solidarity and an achievement of goods otherwise not possible. But Plato had a point. The world of the family, while imbedded in the larger public world, has a centrifugal force of its own, making its presence in a society and state a problem which must be perpetually solved if the society and state are to continue and to benefit from the unique training, values, and efficacy which the family provides.

The family often has interests, stresses, and values

which are opposed to those characteristic of the larger group outside. A child must be weaned at least twice, once in order to attain the status of a more or less self-sustaining member of a family, and then again in order to attain the status of one who can exist outside the family in which he is raised. The members of a family usually keep to the little segment they together constitute. They seek familial goods, and cherish their own, sometimes to the disadvantage of others outside. Biased toward its own members, the family is sometimes defiant of the rest.

(d) Love often precedes, sometimes defies, but occasionally takes up residence inside a family; friendship of some sort can take root in the family but more often ignores and prospers outside of the familial boundaries. But in either case they entail such intimacy and exposure that it is almost as true to say that they define a private world, comprising a number of beings, as it is to say that they provide the connecting tissue for a small public world which has a quality not possible in any other.

Though involving the most vigorous and penetrating relations, love and friendship have even less to keep them in existence than a family does. They lack the constancy, the impersonality, the control by habits and rules, the restraint which stems from an acknowledged social past and a publicly shared vision of the future. These are necessary if a union is to outlast transient vital concerns and pressing needs. But love or friend-

ship so well and closely unite men that they can serve as a model for larger worlds which, though more persistent, are also less satisfying. Such a model is useful only if it is possible for men to somehow vitalize the more public widespread bonds to a degree not yet exhibited.

## 2. VITALIZATIONS OF THE PUBLIC WORLD

No matter how immersed a man may be in the public world, there is something of him that remains over. He is and continues to be a private being no matter how public his existence and interests. His privacy can never be exhaustively expressed in public; if it could, he would be able to turn himself inside out. He would then be devoid of any further potentialities, incapable of random, undisciplined thought and expression, without an interest in or awareness of truths and values outside this world which may never be realized here at all. He would be incapable of ethical judgment, of religious concern, or of speculation. Yet if he never expressed his private powers in a public context, if he never charged the public world which he constitutes together with others with his private achievements and intentions, those public worlds would have only minimum vitality and limited flexibility. Men as a matter of fact enrich those public worlds in at least four ways. They express in them something of their (a) affection, (b) apprecia-

tion, (c) sense of decency, and (d) imagination. These are in an order of decreasing intensity and decreasing range.

(a) At his innermost a man is a sheer self, a being who is over against all others and whose expressions are therefore unconditioned by what lies outside. He is therefore one who is essentially free. This freedom is expressed initially in a form of spontaneity—a spontaneity which is polymorphous, capable of being manifest in multiple directions and forms. Under the guidance of reason and habit, subject to the rules and interests of his mind, appetite, experience, powers, and organs, it becomes canalized, bounded, defined, and eventually has a public meaning and weight.

Affection is an expression of the self which is so close to the self's initial uncharted spontaneity that it is often hard to distinguish the two. It has both a positive and a negative form, not too different from what is usually termed love and hate. These are grounded in a prior apprehension of the possible effect of the world on one-self and one's stresses; they presuppose both fear and hope. Fear is rooted in an immediate experience of threat, of an intrusion now being partly countered; hope involves some awareness that there is to be a satisfaction greater than that which one is now experiencing. The one expresses the self's anticipation that there is something to hate; the other, that there is something to love or befriend.

Affection itself of course is not yet love or friendship,

but its boundaries are given by the objects which one in fact loves or has loved, and with which one has friendly bonds, just as on the other side, love and friendship receive vitalization and increased significance through the infusion of affection. The continuance of love and friendship depends, in fact, on the continuous renewal of expressions of affection. Without such renewal they would remain partly in potency, with a rigidity that precludes the realization of the values which they might otherwise promote. No one ever was a lover or a friend with all the affection, and with affection for all the time, that was both necessary and possible.

(b) Appreciation is a little less vivid than affection. It is an active mode of dealing with an external reality in the light of its full value and multiple nuances. It is this which lies at the root of our grasp of beauty, where beauty is understood not merely to have an application to certain artifacts or items which meet with approval or are encountered with pleasure, but is expressive of an integration of a plurality of elements into a final unity having a prescriptive value for a host of phenomena. It is the appreciation of beauty in this sense which is needed in order that the family be at its best, for such appreciation not only makes possible an attractive place of living but promotes the perfection of the individual members severally and together.

A family can exist perhaps without any, and surely where only a minimum of appreciation is ever ex-

pressed. But to be a genuine family, to convert as it were a body of men in vital interplay into a tiny world in which each is strengthened by the rest, appreciation is needed. It is possible also to extend to the family something of the affection which characterizes the vital co-existence of lovers and friends. When this is done the appreciation is complemented by an interest in the beings whose merits and natures are enjoyed for what they are. The best of families are those in which such supplementation of affection by appreciation is at a maximum.

Just as affection itself never is fully expressed in the family, or even in smaller units, so appreciation is never fully expressed in the family or in larger groups. There is always some appreciation that could have been made manifest, but which, because of fatigue, limited interests, other concerns, and the driving necessities of daily living never gets an opportunity.

Appreciation no less than affection is an expression of the self; it is spontaneous, freely moving from the self to the object to make it a signalized entity which thereafter has a new import because it has been made subject to a new condition. Its use does not mean that what it alights on is a product of a subjective attitude, but only that the subjective attitude does make an important difference to the object which is appreciated. To appreciate is to accept the object as it is in fact, but at the same time to make it have a new import. No limit can be set in advance as to the degree and place

where appreciation can be manifest; one remains capable of fresh appreciations no matter how much or what one has appreciated before.

(c) There is a public world outside the family. Could one extend to it one's affection and appreciation one would make it a vital, vibrant whole. But it is dubious whether one could ever extend affection much beyond the family. And appreciation, since it does involve an apprehension of what other things are, is restricted necessarily to only a few items and often depends for its full value on the fact that an experience of some duration has preceded it. What one can expect is that the societal body of men be charged with a greater reasonableness, power, and prestige—in brief, a greater decency than is customary.

The sense of decency is not to be confused with the conventional acceptance of certain values which the society cherishes. Such acceptance is essential to the well-being of the society; it is the society's means for preserving itself. The sense of decency, on the contrary, is the outcome of the individual's efforts to make his privacy manifest inside a public social body. Should he succeed, that body will become the locus of values which may not have been wanted but which are surely needed by the beings who together make the past effective in the light of what ought to be publicly realized.

Lovers and friends enrich others taken as individuals. Members of the family enrich others taken as relatives in vital interplay. The members of a society or state en-

rich men who are public units in a common enterprise requiring some acceptance of the fact that each has a role, and some confidence in the ability of each to contribute to what all need in order to be perfected. All societies and states depend on the expression by men of a sense of the worth of other men, and a confidence that a proper treatment of them will be rewarded in fact or in principle in the shape of private virtue or eventual regard.

(d) Affection and appreciation fade off as we move from family to society and state. The expression of the sense of decency can, however, be extended somewhat beyond the borders of the society and state, though it tends then to lose intensity and effectiveness. What is characteristic of a culture, or more particularly of the body of men who constitute it, is a fidelity which is quickened by constant infusion of a private sense of the dignity of men who participate in the same cultural world. Without that infusion the culture tends toward the monotone, ceasing to provide that completion which lures men to move outside the confines of society and state.

The awareness of the dignity of others in a culture has its roots in the fact that men have the imagination to recognize that these others are equally men. Not to be aware of this in any way is not to be aware of oneself as a man. To be a man it is necessary to have some grasp of the fact that one is on a footing with others. When from the private recesses of one's self one charges

a culture with a vitality expressive of this fact, one turns its members into beings who not only are faithful to the spirit of that culture but to the worth of one another.

### 3. CIVILIZATION

To be a man is to belong to the single public domain of mankind. It is because we all are members of this domain that it is possible to have an anatomy, a physiology, a biology, a surgery, and even a kind of psychology which is neutral to the stresses and influences of smaller groups and limited interests. This is not to say that these disciplines are in no way the products of social conditioning. Their histories, language, ideals, the training they provide and require, the opportunities they have, the occasions on which they are employed, are all functions of limited groups.

This is a truth which the bolder sociologists have insisted on; nothing, according to them, is untainted by the social group in which it is pursued. But it is a rare sociologist outside of Russia who carries out his convictions to the bitter end. Lysenkoism, whether wrong in detail or not, is the type of biology and botany that a sociological theory of science demands. The position cannot of course be persistently maintained without making truth, verification, communication, abstract mathematics and logic matters of local significance

only. And he who took this line would of course be faced with the fact that he desired special dispensation for his own view; his view makes sense only if there is some kind of truth which transcends local conditioning. To say all truths are local or relative is in effect to urge at least one claim that is cosmic and absolute. Otherwise one would self-confessedly say nothing relevant to those outside one's own group.

We are all members of mankind and this by virtue of the fact that we are men. We remain members of mankind so long as we are alive. But mankind does not constitute a public domain; it is just an aggregate of humans. The members of it are so many different specimens of man. Mankind assumes the shape of a public domain only when men live up to the condition of having a minimal bodily and mental health. Those who meet this condition are part of a single public domain, embracing the largest number of men. To meet the condition is not yet to be really united with the others. The condition but defines an area in which men can work together in common terms. Those who fail to meet this condition are no less human than others, but they come to belong with those others only through the latter's mediation, tolerance, or support.

Health marks a reputable member of the public domain of mankind, but does not suffice to link him with others. It is the hope of man that we shall be able to alter this fact and together form one organic public world. Should we be able to do this we shall at last have

an opportunity to infect the resulting world with a vitality and meaning which will enable it to meet the changing needs and appetites of men. Should we be able to do this, we will make provision for a possible extension of the sense of dignity and occasionally of decency and confidence, and for fleeting moments even of appreciation, beyond the boundaries of even the widest of cultures. To achieve this result we must not only belong to society, state, and culture, not only give our sense of dignity, decency, confidence, appreciation, and affection proper public expression, but must learn to extend our creative powers to their limit in power, range, and accomplishment.

No force, no education, no mythos, no ideology, no law, no habit will bring us to the point where we are civilized. Action is needed. To make Civilization a reality, we must act in one of three ways. While remaining inside our own societies, states, and cultures we must so act that our lives are perfected in harmony with those lived by men in other communities. Or we must try to ignore our own societies, states, and cultures and set about at once with men everywhere to forge a single Civilization. Or we must take steps to bring about a single world-state, and inside this improve ourselves until we reach the stage where we constitute the Civilization that ought to be.

The first of these alternatives supposes that the various cultures necessarily fit one with the other. It provides no way of making the fragments cohere. The

second is somewhat utopian in its supposition that our societies, states, and cultures will permit men to ignore or neglect them, even in order to promote the goal of a most desirable Civilization. It also tempts one to ignore the advantages which social, political, and cultural life entail. Only by following the third route do we have any hope of reaching the cherished goal. In this generation the first faltering steps have already been taken.

The United Nations is confused in principle and ineffective in practice. Instead of assuring its continuance by forging devices which would prevent anyone from leaving it, it spends weary days seeking to exclude powerful nations from participating in its work. Built on the policy of giving more rights to nations already great in power or prestige, it has but a tiny military force at its disposal, and thus can do little more than keep small nations in some semblance of order. Nevertheless the United Nations represents the greatest advance ever made in history toward the achievement of a world state. We are consequently today closer than ever before to the time when Civilization will be a reality.

The United Nations has made little progress these last years. It should urge and then compel all nations to be members of it. It should continually increase in power until it is stronger than any of its members or faction of members. Only when it reaches that point will peace be more than a contingent product of nations which do not happen to be at war, and be instead

the planned outcome of a sovereign control over a plurality of states, each living up to the requirements of a relevant Natural Law. Only then will men have the leisure and opportunity to become full-fledged members of one Civilization. Only then will they be able to satisfy their individual native rights to a degree greater than that which can be ensured by good habits and enforced civil duties. Only then will men have found the answer this world provides to the fears that beset them from birth to death. Only then will men have the power and ability to meet the threat of a relentless insistent nature. Only then will free men together in peace and harmony engage in the arts and sciences. Once we arrive there, however, we will find that it too cannot ultimately satisfy, and that our search for a lasting peace and a genuine fulfillment will require us to move beyond Civilization and any other public world we may have achieved.

### 3. BEYOND CIVILIZATION

When attention is paid to the fact that man is more than a public being, that he is concerned with aesthetic, ethical, religious, and speculative objects which stand outside the natural order, reflections on the nature of man and his destiny break through the confines even of a discussion of a possible Civilization. The common human good which Civilization is to realize could not

beckon in fact, could not await fulfillment by men did it not now stand apart from us and all our worldly works. Since the good for man is a good for him both as a private and as a public being, the common human good for public men must be part of a still richer good, the Absolute Good, which is appropriate to his other dimensions as well. In the light of other studies it seems clear that this richer good is inchoately evident to all men, is pointed at by all existence through all time, and is sustained by whatever God there be. Plato called it the mother of all being and knowledge, an eternal form, created neither by God nor by man. The model of all that is and ought to be, it can be known better and better the more we are civilized. And the more we are civilized the more evident it becomes.

The more surely we grasp what the Absolute Good is and what it demands and allows, the more surely are we able to answer man's three burning, perpetual questions: Who am I? How can I live with myself? What ought I do? It tells us that while we live in the natural world we men belong in public groups no one of which, short of Civilization, is rich or inclusive enough to provide an adequate public home for us; that no public world can be at a high enough constant pitch to avoid the need to have man's private self constantly expressed within it; and that no outward expression or public life is ever adequate to all man's needs and powers. We can live with ourselves only so far as we do justice to the demands of the best of public worlds, give

full expression to our privacy in public, and still have time, energy, and interest to pursue the supreme goods of inquiry, virtue, and art. The travail of history is the production of men who, having learned the need to be civilized, come to see that Civilization too will not be able to include all that man needs in order to be fully man.

Civilization can encompass much more than mankind has so far achieved. This fact ought never to be forgotten even as we look outside the natural order and try to do some justice to what lies forever beyond. It is the mark of the civilized man to know that Civilization, while not everything, is a great good, greater than any we have yet publicly enjoyed.

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